NOAA and EPA Preliminary Decisions on Information Submitted by Oregon to Meet Coastal Nonpoint Program Conditions of Approval

I. BOUNDARY

CONDITION: Within one year, the Oregon Department of Land Conservation and Development (DLCD), Oregon Department of Environmental Quality (DEQ), U.S EPA, NOAA, and other relevant State, local, and federal agencies will participate in a cooperative process to review relevant information and determine an appropriate 6217 management area boundary consistent with established national guidance for the 6217 program.

FINDING: Oregon has satisfied this condition.

RATIONALE: Oregon's 6217 or coastal nonpoint management area for the State of Oregon is the state's existing coastal zone boundary with the addition of the inland portions of the Rogue and Umpqua Basins, in their entirety. The inland boundary of the management area intersects the Columbia River at the westward end of Puget Island, near the inland boundary of Washington's 6217 management area The inland boundary of Washington's management area intersects the Columbia River at the eastern border of WRIA 25, just east of the Wahkiakum County border.

This boundary is slightly smaller than the one NOAA originally recommended based on the state's coastal watersheds. However, NOAA and EPA's March 16, 1995, *Flexibility for State Coastal Nonpoint Programs*, guidance noted that states could use additional data and information to submit an alternative coastal nonpoint program boundary that may be less extensive than the state's coastal watershed. The Columbia River Basin is a huge, multi-state and multi-national drainage basin covering 233,000 square miles; three states and Canada contribute to the water quality of the lower Columbia River. Given its vast size, a significant amount of nonpoint source pollution within the Columbia River watershed occurs outside the "coastal watershed" boundary. In Oregon, 98% of the Columbia River watershed within the State is located above the coastal watershed. Also, 90% of the agricultural indicators of nonpoint source pollution NOAA examined in making its boundary recommendation are located above the coastal watershed. Similarly, 70% or more of the population of the Columbia River watershed resides above the coastal watershed. These factors make it extremely difficult to determine whether the relatively small portion of polluted runoff generated within the coastal watershed but outside of the Oregon's coastal nonpoint program management boundary has a significant impact on the coastal waters of the state. Therefore, based on these complicating factors and the 1995 flexibility guidance," NOAA and EPA will defer to Oregon's statement that the appropriate coastal nonpoint program boundary is westward of Puget Island.

NOAA and EPA recognize that there are other tools that are currently in use or being developed to

address nonpoint source pollution outside of the coastal nonpoint program management area, such as TMDLs for 303(d) listed waters and National Pollutant Discharge and Elimination System (NPDES) Phase I and Phase II stormwater permits. However, NOAA and EPA remain concerned that sources outside the coastal nonpoint program management area could contribute to water impairment in the lower Columbia River. Therefore, we expect Oregon to use all applicable programs to control nonpoint source pollution beyond the coastal nonpoint program management area in the Lower Columbia coastal watersheds, to monitor water quality, and, if necessary, to take additional steps in the future to address those sources that have a significant impact on coastal water quality.

II. AGRICULTURAL MANAGEMENT MEASURES

A. CONFINED ANIMAL FACILITIES (Large and Small Units)

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217 (g) guidance for facilities where animals are confined for less than four months and that do not have prepared surfaces or waste water control facilities. Also within two years, Oregon will provide a strategy (in accordance with section XII, pages 19-20) for use of the State's water quality law (ORS 468B) as a back-up enforceable mechanism to ensure implementation of the management measures for confined animal facilities as proposed on pages 48-50 of the State's program submittal.

FINDING: Oregon has satisfied this condition.

RATIONALE: The Oregon Legislature adopted House Bill (HB) 2156 in 2001, amending ORS 468B to define confined animal feeding operations according to rules established by the Oregon Department of Environmental Quality (DEQ) and Oregon Department of Agriculture (ODA) and to require that the definition distinguish between various categories of operations, including those regulated by NPDES permits. The new definition removes the exclusion for combined animal feeding operations (CAFOs) where animals are confined for less than four months and that do not have prepared surfaces or waste water facilities. OAR 603-074 establishes rules for administering the CAFO program, including enforcement against water quality violations. Since 1999, ODA has conducted annual inspections of permitted CAFOs. Two new CAFO inspector positions have been created for the south and mid-coast coastal nonpoint management area. An inspector based in Tillamook will also service the northern portion of the CNPCP area. The state also has a complaint-driven enforcement process and an educational outreach program.

B. EROSION AND SEDIMENT CONTROL, NUTRIENT, PESTICIDE, GRAZING, AND IRRIGATION WATER MANAGEMENT

CONDITIONS: Within one year, Oregon will (1) designate agricultural water quality management areas (AWQMAs) that encompass agricultural lands within the 6217 management area, and (2) complete the wording of the alternative management measure for grazing, consistent

with the 6217(g) guidance. Agricultural water quality management area plans (AWQMAPs) will include management measures in conformity with the 6217(g) guidance, including written plans and equipment calibration as required practices for the nutrient management measure, and a process for identifying practices that will be used to achieve the pesticide management measure. The State will develop a process to incorporate the irrigation water management measure into the overall AWQMAPs. Within five years, AWQMAPs will be in place.

FINDING: Oregon has satisfied these conditions.

RATIONALE: Oregon has satisfied the conditions for Agricultural Water Quality Management Areas (AWQMAs), Agricultural Water Quality Management Area Plans (AWQMAPs or 1010 plans), and grazing. The State has established seven AWQMAs covering its coastal nonpoint program boundary and has developed AWQMAPs consistent with the 6217(g) guidance for all of these areas. All 6217(g) agriculture management measures, including nutrient management, pesticide management, irrigation, and grazing, have been included in the appendices of the coastal AWQMAPs, and in some cases, the measures have been incorporated directly into the plans. ODA and DEQ have established a joint process to review and revise the AWQMAPs every two years although NOAA and EPA note that the state has not been able to keep with this two year review cycle for all plans. NOAA and EPA encourage Oregon to ensure the plan reviews and updates occur regularly as designed and that the state uses this process to insert the 6217(g) agricultural management measures directly into the body of AWQMAPs over time and to more closely link AWQMAPs with TMDL load allocations.

ODA can adopt rules and prohibitions necessary to implement the AWQMAPs under ORS 568.900-568.933 and OAR 603-090-0000 through 603-090-0120. While ODA has adopted rules for all AWQMAPs within the coastal nonpoint program boundary that provide some direct enforcement authority for the plans, NOAA and EPA acknowledge that these rules are not strong enough to provide the state with direct enforcement authority for the AWQMAPs to meet 6217(g) requirements. However, the state has provided a legal opinion from its Attorney General pursuant to NOAA and EPA's 1998 *Final Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance*, demonstrating the state has adequate back-up authority to ensure implementation of the AWQMAPs. The legal opinion asserts that DEQ and the Environmental Quality Commission (EQC), in conjunction with ODA, has statutory authority to prevent nonpoint source pollution and require implementation of the 6217(g) management measures for agriculture as necessary under ORS 468B and ORS 568.900 to ORS 568.933. ODA shall consult with DEQ and the EQC in the adoption and review 1010 plans and the adoption of rules to implement the plans, providing a clear link between implementing and enforcing agencies (ORS 568.930). ODA is also committed to use enforceable mechanisms to address water quality pollution problems where voluntary compliance is not achieved (OAR 603-090-0000). In addition, a Memorandum of Agreement between DEQ and ODA memorializes coordination efforts addressing TMDLs for water quality limited water bodies and AWQMAPs.

Although Oregon has fully satisfied the AWQMAP condition on its coastal nonpoint program and met all 6217(g) requirements (i.e., has a process in place to implement the (g) management measures), NOAA and EPA are concerned about other aspects of the AWQMA planning process. Even though AWQMAPs are developed on a watershed scale and are not intended to only address impaired waters, NOAA and EPA are concerned that the impetus for AWQMA planning is driven more by TMDLs. Therefore, people may assume that measures need only to be implemented in specific areas where water quality is degraded which is not the case. Site-specific implementation triggered by degradation rather than proactive implementation across the landscape is not consistent with the 6217 goals of pollution prevention. NOAA and EPA also are concerned that, in actuality, the state does not take enforcement action when voluntary plan implementation is not meeting water quality goals.

Given these concerns, NOAA and EPA strongly encourage DEQ and ODA to do a thorough sufficiency analysis every two years and revise the plan and rules accordingly to include more specific standards consistent with the 6217(g) management measures for agriculture. In addition, NOAA and EPA also strongly encourage ODA to take a more active enforcement role to ensure the AWQMAPs and 6217(g) measures are being implemented as designed.

The State also has specific programs for nutrient management and irrigation that provide additional support for the AWQMAPs. Nutrient management plans, consistent with the 6217(g) guidance, are required under all new or expanded CAFO permits in compliance with ORS-468B, OAR-60374, the Federal Water Pollution Control Act (33 U.S.C., Section 1251 et seq.), and NPDES. Under the CAFO laws and rules, ODA has the authority to require nutrient management plans as part of compliance orders they issue to correct nutrient or waste load violations. The Water Resources Department's (WRD) Water Use Basin Programs codified in OAR Chapter 690 also support the irrigation measure by establishing subbasin classifications and limits on water use. NOAA and EPA encourage the ODA and DEQ to improve their coordination with WRD to ensure implementation of the 6217(g) irrigation measures. Oregon State University has also developed Western Oregon Irrigation Guides which include information on timing, measuring soil-water depletion, and application rates.

Because the language consistent with the 6217(g) measure for grazing is included as a recommended practice in the appendix of all AWQMAPs, the state no longer needs to complete the wording of the alternative management measure for grazing.

[ADD SOMETHING ON IR-TMDL APPROACH AS APPROPRIATE].

III. URBAN

A. NEW DEVELOPMENT, SITE DEVELOPMENT, CONSTRUCTION SITE EROSION AND SEDIMENT, AND CHEMICAL CONTROL

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation throughout the 6217 management area.

FINDING:

- The state is exempt from the Construction Site Erosion and Sediment Control and Construction Site Chemical Control measures throughout the 6217 boundary. These measures are now covered under the NPDES Phase I and II Stormwater Program. **(January 13, 2004)**
- The state has satisfied the programmatic component of site development management measure **(January 13, 2004)**
- Outside of Phase I and II designated areas, Oregon has not satisfied the management measure component of the New Development management measure. **(June 25, 2008)**
- Oregon has demonstrated it has enforceable policies and mechanism in place to ensure implementation of the new and site development measures throughout the 6217 boundary. **(June 25, 2008)**

RATIONALE: Oregon meets the new development, site development, construction site erosion and sediment control and construction site chemical control measures through a mixture of regulatory and voluntary programs including its NPDES and TMDL programs, State Land Use Goals, and Water Quality Model Code and Guidebook.

First, NOAA and EPA have determined that states are exempt from the construction site erosion and sediment control and construction site chemical management measure requirements throughout the coastal nonpoint program management area. States are also exempt from the new development management measure within NPDES Phase I and II MS4 communities. These activities are covered through the NPDES stormwater permit program. (See NOAA and EPA December 20, 2002 memo, *Policy Clarification on Overlap of 6217 Coastal Nonpoint Programs with Phase I and II Stormwater Regulations*). In Oregon, the Medford Urbanized Area, and Jackson and Lane Counties are currently the only MS4s within the coastal nonpoint program management area. Grants Pass, Roseburg, and Coos Bay are to be evaluated under draft MS4 designation criteria but they have not been designated Phase II communities as of yet.

To address the new development measure outside of designated NPDES Phase I and II stormwater areas, Oregon is relying on its TMDL program. TMDLs have a wide geographic coverage in Oregon and almost all communities within the coastal nonpoint program management area must meet load allocations for either sediment or temperature. In 2013? Oregon released The *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area* …[ADD TEXT EXPLAINING HOW GUIDANCE AND TMDL PROCESS MEETS (OR STILL DOESN'T MEET?) 6217 NEW

DEVEL REQUIREMENTS]

Even prior to the new TMDL implementation plan guidance being released, some communities were already incorporating elements consistent with the 6217(g) guidance for new development. For example, the Curry County plan reference its stormwater ordinance, which requires reducing the amount of post-development runoff consistent with the 6217(g) guidance, and provides best management practice standards to reduce total suspended solids per the 6217(g) guidance.

For areas where TMDL coverage may be lacking, Oregon's Water Quality Model Code and Guidebook enables the state to meet the new development management measure. According to a January 2001 hardcopy edition that NOAA and EPA reviewed, the guidebook also includes many practices that are consistent with the (g) guidance for new development. However, the October 2000 version that is available online is missing the critical stormwater plan section that establishes guidelines and best management practices that should be incorporated into a stormwater plan to reduce total suspended solids. While Oregon did actively promote the guidebook to local planners when it was first released in 2001, the federal partners are unclear if the state continues to work with planners to make sure they are aware of and using the guidebook as designed, especially since critical information that is needed to help satisfy the new development measure is missing from the online version. Without additional information about how the state is actively promoting and tracking its use, NOAA and EPA do not feel that the voluntary guidebook would be acceptable for meeting the new development condition by itself.

To address the site development measure, Oregon also uses the Water Quality Model Code and Guidebook along with its NPDES General Permit for Construction Activities, and State Land Use Goals to satisfy this condition. First, all activities that disturb more than an acre of land must receive a NPDES General Permit for Construction Activities. The General Permit includes, as additional control practices which must be developed if appropriate to the site, recommendations to minimize the area of disturbance and requires the permittee to describe practices that will protect existing vegetation.

State Land Use Goals 5, 6, and 7 also protect areas that provide water quality benefits, limit disturbance of natural drainage features, minimize impervious surfaces, and limit clearing and grading within identified significant natural resource areas. State law requires reach city and county to adopt a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect. The local comprehensive plans must be consistent with the statewide planning goals.

In addition to the NPDES permit and State Land Use Goals, the Water Quality Model Code and Guidebook, includes guidelines and examples that are consistent with the (g) guidance for site development such as limiting impervious surface, retaining natural vegetation, protecting areas that provide important water quality benefits, and limiting disturbance of natural drainage features. To help promote the best practices included in the Model Code and Guidebook, OSU Extension/Oregon Sea Grant has an active outreach and training program for local communities on

low-impact development and has teamed up with the EQC to sponsor "stormwater solutions" workshops along the coast, Willamette, and Rouge Valleys. NOAA and EPA encourage Oregon to continue its proactive outreach about good stormwater management practices for new and site development to local communities.

NOAA and EPA understand that the state is currently updating the Model Code and Guidebook. The state anticipates distributing it to city and county planning directors via CD and the web this spring/summer. NOAA and EPA look forward to reviewing the updated document. In addition to distributing the document to local planners and announcing the new release at a statewide planning conference, we strongly encourage the state to take a more proactive approach to educating and training local planners and other decision makers about the guidebook.

Per NOAA and EPA's *1998 Final Administration Changes Memo,* Oregon has provided a legal opinion from its Attorney General to enable the state to use voluntary programs, like the Water Quality Model Code and Guidebook and stormwater and low impact development outreach programs, to help address its 6217 requirements. The legal opinion states Oregon has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the 6217(g) measures, including the new and site development management measures, as needed.

B. WATERSHED PROTECTION AND EXISTING DEVELOPMENT

CONDITION: Within three years, Oregon will further develop its program to implement the management measures for watershed protection and existing development in conformity with the 6217(g) guidance throughout the 6217 management area.

FINDING: Oregon has satisfied this condition.

RATIONALE: Oregon has satisfied its condition for existing development and watershed protection through its TMDL program, urban growth boundaries (UGBs), Land Use Goals, watershed protection and restoration activities under the Oregon Watershed Enhancement Board (OWEB) and the Oregon Plan for Salmon and Watersheds, and Executive Order No. EO99-01which reaffirms the Oregon Plan for Salmon and Watersheds.

Oregon's rigid UGBs provide watershed protection benefits by confining development to a predetermined geographic boundary. The State provides extensive assistance to communities coping with population increases within the UGB, such as the Department of Land Conservation and Development's (DLCD) Transportation Growth Management Program, which provides technical and financial assistance to local governments to incorporate "Smart Growth" principals into their planning codes. Where a UGB needs to be expanded, the state statute sets priorities for what lands adjacent to the UGB should be considered for expansion; environmental factors must be considered. The statute also allows lower priority land for urbanization can be considered for inclusion into the UGB if future urban services (i.e., roads, sanitary sewers, storm sewers, other

public utilities) could not be provided to the higher priority land due to topographical or physical constraints (i.e., steep erodible slopes, sensitive riparian habitat, wetlands or other areas essential to the natural drainage system of the area) which is consistent with the 6217(g) guidance for watershed protection).

Under the Oregon Plan, watershed councils have developed watershed assessments that help identify opportunities to preserve and restore areas that provide important water quality benefits or are necessary to maintain riparian and aquatic biota. The assessments also help identify priority projects to reduce polluted runoff from existing development. Based on these assessments, watershed councils develop watershed action plans to make funding decisions for watershed projects carried out through the Oregon Watershed Enhancement Board or the Healthy Streams Partnership. For example, between July 2001 and December 2002 OWEB distributed $45 million for projects that restore, maintain, and enhance Oregon's watersheds.

Oregon's TMDL program is another program that identifies opportunities to reduce polluted runoff from existing development for impaired waterbodies. [ADD MORE TO EXPLAIN]

Finally, other statewide planning goals and guidelines such as Goals 5 and 6, also support the watershed protection measure by requiring local governments to inventory sensitive areas and protect natural resources. Oregon encourages local governments to adopt ordinances to support these Goals. NOAA and EPA strongly recommend the State continue to ensure local governments adopt ordinances consistent with the statewide land use goals.

Per the NOAA and EPA's *1998 Final Administration Changes Memo,* Oregon has provided a legal opinion from its Attorney General to enable the state to use voluntary programs, like OWEB, to help address its 6217(g) requirements. The legal opinion states Oregon has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of all 6217(g) management measures, including existing development and watershed protection, as needed.

C. NEW AND OPERATING ONSITE DISPOSAL SYSTEMS

CONDITION: Within two years, Oregon will finalize its proposal to inspect operating OSDS, as proposed on page 143 of its program submittal.

FINDING: Oregon has not satisfied this condition.

RATIONALE: [UPDATE THIS SECTION WITH NEW OSDS RULES].Oregon has demonstrated that it has an adequate and very strong inspection program for alternative treatment systems and has a viable inspection system for responding to complaints, although NOAA and EPA would like clarification on how the State determines what constitutes a "high priority complaint." However, Oregon still lacks an adequate inspection program to proactively inspect conventional septic systems throughout its coastal nonpoint management area.

NOAA and EPA note that DEQ may still pursue rule changes to require regular inspections of existing OSDS. While we encourage the state to continue to seek a rule change, we also recognize that this may take a long time and can be politically challenging to achieve.

D. ROADS, HIGHWAYS, AND BRIDGES

CONDITION: Within two years, Oregon will (1) develop management measures in conformity with the 6217 (g) guidance for construction site chemical control; (2) develop enforceable policies and mechanisms to implement the roads, highways and bridges measures on all federal and State highways throughout the 6217 management area; (3) develop management measures in conformity with the 6217 (g) guidance and enforceable policies and mechanisms for local roads, highways, and bridges throughout the 6217 management area; and (4) provide a strategy (in accordance with section XII, pages 19-20) for use of the State's water quality law (ORS 468B) as a back-up enforceable mechanism to ensure implementation of the management measures for operation and maintenance and for runoff systems, as proposed on pages 155 and 157 of the State's program submittal.

FINDING: Oregon has satisfied these conditions. **(June 25, 2008)**

RATIONALE: Oregon has satisfied its roads, highways, and bridges conditions through its NPDES and TDML programs, and OWEB grant programs. First, NOAA and EPA have determined that states are exempt from the construction site erosion and sediment control and construction site chemical management measure requirements throughout the coastal nonpoint program management area as these activities are covered through the NPDES stormwater permit program. States are also exempt from the other roads, highways, and bridges management measures within NPDES Phase I and II MS4 communities. (See NOAA and EPA December 20, 2002 memo, *Policy Clarification on Overlap of 6217 Coastal Nonpoint Programs with Phase I and II Stormwater Regulations*). In Oregon, the Medford Urbanized Area and Jackson and Lane Counties are currently the only MS4 within the coastal nonpoint program management area. Grants Pass, Roseburg, and Coos Bay are to be evaluated under draft MS4 designation criteria but they have not been designated Phase II communities as of yet.

Outside of MS4 areas, the Oregon Department of Transportation's (ODOT) Phase I Stormwater NPDES MS4 General Permit enables the state to satisfy the remaining roads, highways and bridges conditions for state and federal roadways. For local roads, Oregon relies largely on a voluntary approach backed by enforceable authorities. The state encourages local governments to follow ODOT's maintenance and construction manuals which are consistent with the 6217(g) guidance and holds training sessions that many local government road crews attend to learn about best management practices for road construction and maintenance. For example, in February 2001, ODOT sent a letter to all local governments, recommending they use the department's manuals.

The DEQ's TMDL Implementation Plan guidance further promotes ODOT's manuals for use by local governments as a way of addressing water quality impairments. Completed TMDL Implementation Plans for Jackson and Curry Counties demonstrate that counties are adopting ODOT's manuals to reduce polluted runoff from road siting and maintenance activities.

The Oregon Watershed Enhancement Board (OWEB) provides funding for a variety of watershed enhancement activities, including improvements to existing roads, highways and bridges to reduce polluted runoff. In the most recent summary report, nearly $30M of OWEB funds went to road improvements statewide during FY 2002 and 2003. The state estimates that one third of those funds were spent within the 6217 management area.

Oregon has submitted a legal opinion from its Attorney General pursuant to the *1998 Final Administration Changes Memo* to demonstrate it has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the voluntary elements of the road, highway, and bridges management measures.

IV. MARINAS

A. MARINA FLUSHING, WATER QUALITY, and HABITAT ASSESSMENT

CONDITION: Within three years, Oregon will include in its program enforceable policies and mechanisms to implement the marina flushing and habitat assessment management measures throughout the 6217 management area.

FINDING: Oregon has satisfied this condition. **(June 25, 2008)**

RATIONALE: New or expanded marinas require a removal-fill permit from the Division of State Lands (DSL). The review process for these permits enables DSL to implement both the marina flushing and habitat assessment management measures. DSL developed a permit review checklist in 2004, to guide permit reviewers in what they should be looking for when reviewing marina permit applications. The checklist includes marina flushing and recommends 6217(g) guidance best management practices for flushing to achieve adequate water quality. To address habitat issues, DSL permit reviewers must condition the permits to "avoid or minimize impacts to fish and wildlife resources" when conducting in-water or shoreline work (141-085-0029(7)(c)).

In addition to DSL's direct review, Oregon's Department of Fish and Wildlife (ODFW) also reviews marina applications under the removal-fill law (ORS 196.795-990) to advise DSL on its permit decisions. ODFW has three policy standards (#14304, #14309, and #14310) consistent with the 6217(g) guidance for flushing to guide their permit evaluations.

In estuarine areas, the habitat assessment measure is also supported by the State's Land Use Goal 16 (OAR 660-015-0010(1)) which provides the State with enforceable policies and mechanisms to implement the habitat assessment measure in the estuarine areas of the 6217 boundary. Goal 16

requires all local jurisdictions in the coastal zone to evaluate estuaries and identify appropriate locations for water dependent uses, including marinas. The existing natural condition and function of the estuary must be considered during the evaluation process. Specifically marinas are prohibited in areas with "natural" designations. Natural areas, at a minimum, must contain all major tracts of saltmarsh, tideflats and seagrass beds.

B. SHORELINE STABILIZATION, STORMWATER RUNOFF, FUELING STATION DESIGN, SOLID WASTE MANAGEMENT, LIQUID MATERIAL MANAGEMENT, and PETROLEUM CONTROL

CONDITION: Within three years, Oregon will develop management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation of these management measures throughout the 6217 management area.

FINDING: Oregon has satisfied this condition. **(February 17, 2004)**

RATIONALE: To address many of the marina management measures, the state has developed and is implementing a voluntary clean marina certification program. The accompanying *Oregon Clean Marina Guidebook.* contains practices consistent with the 6217(g) guidance for the solid waste management, liquid material management, petroleum control, fueling station design, and storm water runoff management measures and has been distributed to all marinas within the coastal management area. The state offers other technical assistance to marinas to help them become "clean", including self-assessment checklists, site visits, and online educational materials. Over 55 marinas throughout the state have already been certified.

Although the Guidebook does not address shoreline stabilization, Oregon has satisfied this management measure through other riparian and restoration programs such as the Oregon Watershed Enhancement Board grant (OWEB), the Oregon Aquatic Habitat Restoration and Enhancement Guide, and Oregon's Statewide Riparian Management Policy. The State also encourages use of bioengineering techniques in bank stabilization project undertaken by property owners.

Oregon has submitted a legal opinion from its Attorney General pursuant to the *1998 Final Administration Changes Memo* to demonstrate it has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the marina management measures, as needed. In addition, Oregon references OAR Chapter 340, Div 101 for Hazardous Waste and DEQ's Air Quality Regulations (OAR 340-246-0010-0230) as other enforceable policies the State can use to prevent hull scrapings and potentially other toxic materials from entering the air and water streams. Oregon's regulations for underground fuel storage tanks (OAR 340-150-0001 thorough 0620) can be used to implement the fuel station design measure when tanks are below ground.

C. SEWAGE FACILITY MANAGEMENT and MAINTENANCE

CONDITION: Within three years, Oregon will include in its program enforceable policies and mechanisms to ensure implementation of these management measures throughout the 6217 management area.

February 17, 2004 FINDING: Oregon has satisfied this condition.

RATIONALE: Oregon's marina guidebook is consistent with the (g) guidance for sewage facility management and maintenance including guidelines for determining the number of boat waste collection devices at marinas and moorages. The State also has a Vessel Waste Facility Construction Program that funds vessel waste disposal facilities. However, these programs are voluntary. Oregon cites their Water Pollution Control Regulation (specifically ORS 468B.25) as back-up authority to ensure these measures are implemented.

D. FISH WASTE and BOAT CLEANING

CONDITION: Within three years, Oregon will issue an NPDES general permit for fish waste management, which will apply to all facilities identified in the 6217(g) guidance.

FINDING: Oregon has satisfied this condition. (**February 17, 2004)**

RATIONALE: Instead of addressing the fish management measure through a NPDES permit, the State has elected to satisfy the condition through its voluntary *Oregon Clean Marina Guidebook* and clean marina certification program. The Guidebook contains practices that are consistent with the 6217(g) guidance for fish waste management. See Part IV.C above for additional information on Oregon's clean marina program and back-up authorities..

E. BOAT OPERATION

CONDITION: Within three years, Oregon will include management measures in conformity with the 6217(g) guidance.

FINDING: Oregon has satisfied this condition. (**February 17, 2004)**

RATIONALE: Oregon satisfies this condition through its voluntary clean marina certification program, Oregon Clean Marina Guidebook, and Oregon State Marine Board's regulatory authority. First, the guidebook contains practices that are consistent with the 6217(g) guidance for fish waste management. See Part IV.C above for additional information on Oregon's clean marina program and back-up authorities.

In addition to the guidebook, the Oregon State Marine Board has authority under Oregon Revised Statutes (ORS) 830.175 -.200 to regulate, through administrative rule making, recreational boating in specific waterways for a variety of purposes, including protection of water quality and fish and

wildlife resources. Boating restriction requests may be made by citizen groups, local governments, or state agencies. Several local rules limiting boating activity have resulted due to OAR 250-19.

V. HYDROMODIFICATION

CONDITION: Within two years, Oregon will develop processes to identify and implement opportunities to (1) improve the physical and chemical characteristics of surface waters and instream and riparian habitat in existing modified channels and (2) stabilize eroding streambanks or shorelines causing nonpoint problems that are not reviewed under existing authorities. Also within two years, Oregon will include in its program the dam management measures for chemical and pollutant control and protection of surface water quality and instream and riparian habitat in conformity with the (g) guidance. Within three years, Oregon will also either modify the exemptions to the removal-fill program or demonstrate that the exemptions do not preclude the State from fully implementing the management measures.

FINDING: Oregon has satisfied these conditions.

RATIONALE: Oregon, through a number of related restoration and protection initiatives, has developed a process to identify and implement opportunities to improve the physical and chemical characteristics of surface water in existing modified channels. Oregon has also developed a process to identify opportunities to restore instream and riparian habitat. Key components include: the Oregon Plan for Salmon and Watersheds, a framework for anadromous fish recovery which fosters local watershed council work to assess and restore watersheds; the Healthy Streams Partnership; the Oregon Watershed Enhancement Board, which funds riparian restoration projects, including stream habitat enhancement and restoration of previously altered stream reaches; the Oregon Aquatic Habitat Restoration and Enhancement Guide, which provides guidance on identifying and conducting restoration activities and state agency criteria and priorities for restoration; riparian management components of Agriculture Water Quality Management Area Plans; and Oregon's Statewide Riparian Management Policy.

In addition, in May of 2002, the Governor's Office published a progressive "Statewide Riparian Management Policy" that states "State agency programs that affect riparian zones should seek to manage for riparian functions as much as possible along the entire stream system, consistent with regional ecology, site capability, and social and economic needs." Among the riparian functions listed are filtration of sediments, organic material, and toxic substances in surface runoff.

Eroding stream banks in the coastal nonpoint program management area are primarily due to forestry and agricultural practices which result in the removal of vegetation from riparian areas. The opportunities for riparian corridor restoration identified via the watershed assessments, Oregon Aquatic Habitat Restoration and Enhancement Guide, and the activities of the Riparian Management Working Group, help to address the effects of vegetation removal on eroding stream banks. In addition, ODA and ODF have entered into a Memorandum of Understanding with DEQ relating to the development of TMDLs and Agriculture Water Quality Management Area Plans

(AWQMAPs), both mechanisms for addressing eroding streambanks. Finally, the State is encouraging the use of bioengineering techniques in bank stabilization projects undertaken by property owners. These projects must be reviewed and permitted by the Division of State Lands (DSL) and receive section 401 Water Quality Certification by DEQ. Both agencies have guidelines which favor the use of bioengineering techniques in stabilization projects.

The Oregon Water Resources Department (OWRD) reviews all dam construction, operation, and maintenance activities. Under OAR 690, Division 310 OWRD must determine whether the proposed surface water use will impair or detrimentally affect the public interest. OWRD can condition dam construction, operation and maintenance activities through its review of permits for water appropriations to protect surface water quality, and instream and riparian habitat. OAR 690-31–0120(3)(b) defines minimum factors to be considered for new appropriations, including "water quality, with special attention to sources either listed as water quality limited or for which total maximum daily loads have been set . . . and sources which the Environmental Quality Commission has classified as outstanding resource waters." OAR 690, Division 33 establishes additional public interest standards with regard to sensitive, threatened, or endangered fish species, and requires OWRD to follow recommendations of an interagency review team comprising representatives of ODA, DEQ, ODFW, OWRD, and other state natural resource agencies, as appropriate.

When conditioning a permit, OWRD draws from a list of standard conditions. Several conditions address dam construction, operation and maintenance activities, including withdrawals, fish habitat, sediment, and downstream water quality. OWRD has demonstrated is can and does condition dam construction, operation and maintenance activities through its water appropriations permit review process to protect surface water quality, and instream and riparian habitats consistent with the 6217 (g) guidance.

NOAA and EPA have determined that states are exempt from the dam management measure for chemical and pollutant control throughout the coastal nonpoint program management area as these activities are covered through the NPDES stormwater permit program. (See NOAA and EPA December 20, 2002 memo, *Policy Clarification on Overlap of 6217 Coastal Nonpoint Programs with Phase I and II Stormwater Regulations*).

Previously, removal and fill activities involving 50 cubic yards or less of material that were not located within essential fish habitat were exempt from the removal fill laws (OAR 141.085). The rule also limited the ODFW from designating more than 20% of any stream as essential fish habitat. Division 102 of the OAR has since been amended to expand the essential fish habitat classification. Now 75-80% all waterbodies in the coastal nonpoint program management area are designated essential habitat, thus removing the 50 cubic yard exemption for removal and fill activities.

In December 2002, the DSL also amended the removal and fill administrative rules (OAR 141.085) to make Oregon's laws consistent with the federal 404 permit exemptions and more

clearly define exempt maintenance and reconstruction activities, as well as exempt farm and forest practices. The state has demonstrated that these minor exemptions will not have a significant impact on surface water quality or impact the state's ability to implement the (g) measures. The state's main strategy for implementing the maintenance aspects of the channelization/ channel modification and eroding stream banks management measures is no longer the removal-fill regulations. The state is now relying on a variety of programs such as Oregon's Watershed Enhancement Board grants program, the Oregon Aquatic Habitat and Restoration Enhancement Guide, and the Agriculture Water Quality Management Area Plans (see sections above for more details).

Oregon has submitted a legal opinion from its Attorney General pursuant to the *1998 Final Administration Changes Memo* to demonstrate it has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the voluntary elements of hydromodification management measures, as needed

VI. WETLANDS, RIPARIAN AREAS, AND VEGETATED TREATMENT SYSTEMS

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217 (g) guidance to assure the protection of riparian areas. The State will also develop a process to promote the restoration of riparian areas in conformity with the 6217 (g) guidance.

FINDING: Oregon has satisfied this condition. **(June 25, 2008)**

RATIONALE: Oregon preserves riparian areas under State Land Use Goal 5. The goal requires local governments to inventory natural resources, including riparian areas, and adopt programs that will preserve significant riparian areas. Local governments can elect to use the "safe harbor" criteria (a streamlined designation process) or the more detailed standard Goal 5 process to identify significant riparian areas. Under the "safe harbor" process, all riparian corridors adjacent to fish bearing streams and lakes are considered significant riparian resources. Local governments must pass ordinances to establish either a 75 or 50 foot riparian protection zone depending on the size of the waterbody. Development, vegetation removal and impervious surfaces are generally prohibited within these protection zones. Exemptions are only granted if equal or better protection for riparian resources is provided through riparian restoration or enhanced buffer treatment.

Under the standard Goal 5 process, local governments are required to conduct a comprehensive inventory of their riparian areas to identify significant riparian resources. The significance of each riparian area must be justifiable based on findings derived from the inventory. The DLCD reviews the inventories to determine they are adequate. The standard process acknowledges that local governments do have to manage other priority land uses that may conflict with riparian protection. Nonetheless, they are still required to establish an effective management strategy for riparian resource protection.

All cities with a population greater than 2,500 and all counties with a population greater than 15,000 must also periodically update their comprehensive plans. All counties within the 6217 management area are required to undergo these periodic reviews. During these updates, they must conduct new inventories of significant riparian resources and ensure they have programs in place to protect Goal 5 resources.

Oregon has also supported riparian protection through OWEB funded projects. According to the 2007 Report to Congress on the Pacific Coastal Salmon Recovery Funds, over $5 million in OWEB funding has helped acquire and permanently protect water quality and fisheries habitat on over 2,300 acres of critical, ecologically significant areas within Oregon's coastal basins.

Agriculture and forestry activities are exempt from Goal 5 requirements; however, riparian protection involving these activities is addressed directly through the Agriculture Water Quality Management Area (AWQMA) plans (agriculture) and the Forest Practices Act (FPA) (forestry). For example, as described earlier under the Agriculture Management Measures section, AWQMAs have developed management plans consistent with the 6217(g) guidance for the agricultural measures which includes practices to protect sensitive areas such as riparian zones. The administrative rules also note that riparian management should be conducted to allow for the establishment, growth and maintenance of riparian vegetation.

Oregon's TMDL program can also play an important role in riparian protection. All the basins within the coastal nonpoint management area have water quality impairments for temperature. To address this impairment, each designated management agency (DMA) within the listed sub-basins must develop TMDL Implementation Plans for temperature. Riparian protection and restoration are important components for reducing temperature impairments as riparian areas provide needed shading to waterways. Several TMDL Implementation Plans that have been completed are consist with the 6217(g) guidance for riparian protection.

In the conditional findings on Oregon's Coastal Nonpoint Program, NOAA and EPA stated concern that forest land riparian areas were not being protected when the land was converted to another use under existing programs. In 2006, Oregon finalized a Memorandum of Agreement (MOA) between the Departments of Forestry, Agriculture, State Lands, Fish and Wildlife, Parks and Recreation, Land Conservation and Development, and Environmental Quality to address this issue. The MOA clearly establishes a process for notifying all signatory agencies when forest land is converted to other uses so that each agency can ensure that its responsibilities in protecting water quality and riparian areas will be carried out. The landowner/operator must submit a Plan for an Alternative Practice to ODF that addresses potential water quality or natural resource impacts of the proposed alternative practice. ODF then shares the plan with the other agencies for review. No conversion activity will be approved unless it complies with the resource protection rules of the appropriate state agency(ies) that have jurisdiction over the new activity.

[add cautionary language noting that while or has met 6217 reuqirements for riparian protection, we still have concerns with how programs are being implemented and that

buffers may need to be stronger in some areas?]

VII. ADMINISTRATIVE COORDINATION

CONDITION: Within one year, Oregon will establish a process for ensuring coordination among State and local agencies with a role in the implementation of the coastal nonpoint program.

FINDING: Oregon has satisfied this condition. **(April 2004)**

RATIONALE: Oregon has established a process for ensuring coordination among State and local agencies to implement the coastal nonpoint program by developing formal coordination mechanisms such as memorandum of understanding, advisory boards, agency outreach to local municipalities, and having regular informal communication among parties responsible for the program.

DEQ has signed separate Memorandums of Understanding (MOUs) with the ODA and ODF to outline agency roles in developing and revising agricultural water quality management plans and TMDLs for forestry, respectively. Several state agencies including DEQ, ODF, the ODWR, and ODFW, have also signed an MOU to provide for continued cooperation to achieve the goals of the Oregon Plan for Salmon and Watersheds, many aspects of which address 6217(g) measures.

The Community Solutions Team Advisory Board is comprised of several state agencies including the DEQ, ODF, DLCD, and ODOT. The Advisory Board coordinates local development issues including many topics relevant to the coastal nonpoint program such as TMDLs and land use laws.

Oregon's Coastal Management Program also conducts regular outreach to local governments within the coastal zone. Discussions include development and implementation of the coastal nonpoint program.

Finally, agency staff involved in the coastal nonpoint program regularly communicate with one another through informal channels. Both DEQ and DLCD have staff dedicated to the coastal nonpoint program and these individuals work with appropriate people at the other state and local agencies as needed to develop and implement the coastal nonpoint program. NOAA and EPA encourage DLCD and DEQ, as the lead state agencies for the coastal nonpoint program, to continue coordination efforts with other state and local government agencies.

VIII. CRITICAL COASTAL AREAS, ADDITIONAL MANAGEMENT MEASURES AND TECHNICAL ASSISTANCE

CONDITION: Within two years, Oregon will identify and begin applying additional management measures where water quality impairments and degradation of beneficial uses attributable to forestry exist despite implementation of the (g) measures. Within two years, Oregon will develop a process for the identification of critical coastal areas and a process for developing

and revising management measures to be applied in critical coastal areas and in areas where necessary to attain and maintain water quality standards. Also within two years, the State will develop a program to provide technical assistance in the implementation of additional management measures.

FINDING:

- Oregon has developed a process to identify critical coastal areas and a process to develop and revise management measures to be applied in critical coastal areas and in areas where necessary to attain water quality standards. **(April 2004)**
- Oregon has developed a program to provide technical assistance in the implementation of additional management measures. **(April 2004)**
- Oregon has not satisfied the condition for additional management measures for forestry. **(April 2004; June 2008)**

RATIONALE: Oregon has described a process for identifying critical coastal areas that considers the factors recommended in the NOAA/EPA *1993 Program Development and Approval Guidance.* Statewide Planning Goal 16, Estuarine Resources (OAR 660-015-0010(1)) recognizes the importance of protecting Oregon's estuaries where new or substantially expanding uses could cause or contribute to water quality impairment. Goal 16 requires classification of Oregon's estuaries into one of four types–natural, conservation, shallow draft development, or deep draft development. The estuary areas are further divided into "distinct water use management units" which define the permissible uses within each unit. In estuaries classified as natural or conservation, only activities which support these designations are allowed. Therefore, Goal 16 is an appropriate vehicle for identifying critical coastal areas in estuaries.

In addition, the OWEB watershed assessment protocol lays out a process to identify and map areas within watersheds that are in need of protection. Such a process is a good vehicle to identify critical coastal areas in the coastal watersheds. The watershed assessments are used to develop restoration and enhancement plans and prioritize projects within each watershed.

TMDLs and their associated implementation plans can also identify critical areas for special attention. Oregon requires that TMDLs developed for impaired watersheds be accompanied by water quality management plans that specify load reductions, a schedule for meeting load reductions, and management authorities responsible for achieving the load reduction. It is anticipated that all watersheds in the 6217 management area will have TMDLs completed by 2006.

NOAA and EPA have determined that Oregon has satisfactorily developed a program to provide technical assistance. Oregon has a number of on-going grant programs, publications, and workshops that provide technical assistance to support implementation of additional management measures, many of which have been discussed in earlier sections of this document. The State has adequately described the type of technical assistance provided (grants, technical assistance documents, training workshops); the agencies providing the technical assistance (DLCD, DEQ, OWEB, ODF); the intended recipients (coastal jurisdictions, watershed councils, individual land

owners, forest operators); and a schedule of availability as required in the *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* (NOAA and EPA, January 1993).

Additional Management Measures for Forestry (June 25, 2008)

Based on Oregon's recent submittal and our understanding of Oregon's Forestry Program, EPA and NOAA still believe that Oregon lacks adequate management measures under the Oregon Forest Practices Act (FPA) rules for protecting water quality and the degradation of beneficial uses from forestry activities. EPA and NOAA's primary concerns, stated in the 1998 conditional findings and reiterated in the 2004 interim decision document, remain. Oregon still lacks adequate measures for protecting riparian areas of medium, small and non-fish bearing streams, high risk landslide areas, and for addressing the impacts of legacy roads. A broad body of science continues to demonstrate that the FPA rules do not adequately protect water quality.

NOAA and EPA support Board of Forestry (BOF) improvements to general road maintenance measures that require a better drainage network for water quality purposes (OAR 629-625-0330) and establish wet weather use requirements/restrictions (OAR 629-625-0700). These two measures, as well as the other improvements described in the submittal, should help reduce road related sedimentation. However, we remain concerned that a significant percentage of the road network on forest lands in Oregon continues to deliver sediment directly into streams, and that new drainage requirements are triggered only when road construction or reconstruction takes place. It is not clear how the rules address water quality impairment associated with legacy roads and a large portion of the existing road network where construction/reconstruction is not proposed. We recommend adoption of a road mapping and abandonment program that creates a requirement and timeline for addressing all active and legacy roads to ensure that water quality is protected. The road provisions in the Washington Forests and Fish Rules are examples that EPA and NOAA believe adequately address roads related water quality protection.

NOAA and EPA also support several recent FPA management measures adopted by the Oregon Board of Forestry (BOF) related to riparian management area requirements. Additional FPA management measures have been adopted to require increased riparian protection upstream from man-made fish barriers (OAR 629-635-0200(13)) and for substituting upland leave trees in riparian management areas along landslide prone non-fish streams (OAR 629-640-0210) likely to deliver wood to fish bearing streams. While these additional measures are an improvement over existing rules, they are not adequate to meet water quality standards or to ensure that beneficial uses such as domestic water supply and salmonid spawning and rearing will be protected. There is a substantial body of assessment and research that have identified the need for increased riparian protection beyond levels provided by the Oregon FPA.

Finally, NOAA and EPA note that there have been amendments to the Oregon Administrative Rules (OAR 629-623-0000 to 08000) to require identification of landslide hazard areas in stewardship plans, and during road construction and maintenance. Timber harvest and road construction are not allowed on sites with "substantial downslope public safety risk." While this

rule change is a step in the right direction and helps to protect a subset of high risk landslide areas, hazards are defined only as they relate to risk for loss of life and property. The majority of small streams and landslide prone areas on private forest lands in Oregon still do not receive adequate protection under the FPA rules. In order to protect water quality, NOAA and EPA strongly encourage Oregon to expand timber harvest and road construction management measures to apply to the high risk landslide areas that can deliver sediment to streams, lakes, and wetlands, not just to areas where property or human life are threatened.

The Oregon Forest Practice Rules and Statutes include best management practices to maintain water quality (ORS 527.765). Part (2) of this section requires the Board of Forestry (BOF) to consult with the Environmental Quality Commission, which is responsible for establishing the policies for the operation of the Department of Environmental Quality, including its water quality programs, as they adopt and review BMPs to address nonpoint source discharges from forest operations. The EQC can petition the Board of Forestry to initiate a "Basin Rule" change review to address inadequacies in the FPA management measures that are contributing to violations of water quality standards (ORS 527.765(3)(d)). The BOF cannot terminate the Basin Rule change review without the concurrence of the EQC. The Basin Rule change provisions that have been in place since 1994 have not been utilized by the EQC. We encourage the EQC to begin utilizing the Basin Rule change provisions where inadequacies in the Oregon FPA contribute to water quality impairment.

EPA and NOAA recognize the extensive voluntary protection and restoration efforts on forestry lands to improve water quality and protect riparian areas. NOAA and EPA continue to strongly support these voluntary efforts. However, the lack of adequate forestry management measures for riparian and landslide prone areas affects a substantial portion of the coastal zone, where 50% to 80% of the stream network in steep, forested watersheds consists of small streams that receive very limited protection. In addition to having direct adverse impacts to water quality, existing forestry practices have indirect adverse effects on the voluntary conservation and restoration efforts of local watershed groups. For example, the benefits of voluntary efforts to remove barriers to fish to allow access to upstream spawning and rearing habitats are offset when forestry practices along upstream reaches degrade riparian habitats and water quality.

While we acknowledge Oregon's extensive voluntary efforts, and its incremental progress on the regulatory front, NOAA and EPA do not believe the progress made is adequate to address the additional management measures for forestry condition on Oregon's Coastal Nonpoint Program. Both Federal agencies continue to believe that additional revisions to Oregon's FPA rules are needed to fully protect water quality and beneficial uses. NOAA and EPA urge the State to move forward expeditiously to adopt and implement additional management measures, either through application of basin specific rules or statewide changes to the FPA and OARs. By adequately addressing our riparian, road and land slide concerns throughout coastal watersheds, Oregon will have sufficient measures in place to address cumulative impacts from forestry as well. If Oregon still wishes to pursue a voluntary approach, backed by enforceable authorities, to address this condition, it must provide more specific information related to funding and project

accomplishments on forestry lands within the 6217 management boundary and associated enforceable authorities.

April 2004 Add MM for Forestry Rationale

NOAA and EPA agree that Oregon has processes in place to identify additional management measures for forestry through review procedures such as that of the Independent Multidisciplinary Science Team and the sufficiency analyses called for in the MOU between ODF and DEQ. However, Oregon has not yet begun to sufficiently apply additional management measures that address our water quality concerns.

In the 1998 rationale for findings and conditions, EPA and NOAA identified areas under the Forest Practices Act and Administrative Rules that should be strengthened to attain water quality standards and fully support beneficial uses: "These areas include protection of medium, small, and non-fish bearing streams, including intermittent streams; protection of areas at high risk for landslides; the ability of forest practices to address cumulative impacts of forestry activities; road density and maintenance, particularly on so-called 'legacy' roads; and the adequacy of stream buffers for application of certain chemicals."

The latter concern about the adequacy of stream buffers for application of certain chemicals is being addressed by processes that may result in additional buffer protection requirements beyond those on existing labels in order to protect endangered species.

NOAA and EPA are pleased to note that more protective forestry rules to address landslides and road construction have been formulated and passed. Amendments to the Oregon Administrative Rules (OAR 629-623-0000 to 08000) require identification of landslide hazard areas in stewardship plans, and road construction and maintenance. Timber harvest and road construction are not allowed on sites with "substantial downslope public safety risk" and harvesting activities that occur on other high landslide hazard areas must use specific practices to prevent ground disturbance. However, hazards are defined only as they relate to risk for losses of life and property, not water quality. NOAA and EPA would like Oregon to explain how these new amendments protect surface water quality, if at all. There have also been other improvements in general road maintenance to provide a better drainage network for water quality purposes (OAR 629-625-0330) and to establish wet weather use requirements/restrictions (OAR 629-625-0700).

In March of 2003, Oregon submitted an update and additional information showing how the Oregon Department of Forestry (ODF) uses recommendations from the Forest Practices Advisory Committee (FPAC), the Independent Multidisciplinary Science Team (IMST), the ODF/DEQ Sufficiency Analysis, and the Eastside Riparian Functions Advisory Committee (ERFAC) to develop rule concepts for riparian areas. The submission included a Forest Practices Process Chart, some detail on recommendations, a sample of minutes from a Board of Forestry meeting, and an anticipated schedule for reviewing riparian concepts and rule making. At that time, it was anticipated that draft rules would be presented to the Board in June 2003 and that rules would be adopted in October 2003.

NOAA and EPA understand that this process is continuing but has fallen behind schedule. At this point, ODF and the Board of Forestry are considering eighteen draft rule concepts for water protection and riparian functions. They are deciding whether the action for each concept will be to draft a rule or to pursue a non-regulatory pathway. Once those decisions are made, the resultant package of draft rules will undergo an analysis of economic impact and examination of alternatives before being put out for public review. At present, three of the eighteen concepts are moving forward into the draft rule package and four of the eighteen concepts are being directed into non-regulatory pathways, leaving eleven still to be decided upon.

The rule concepts that relate most directly to the expressed concerns of the Coastal Nonpoint Program are the following:

Rule Concept	***Proposed Action***
2. Use Type F prescriptions for large and medium Type N streams	*Undecided*
3. Riparian management areas (RMA) above fish barriers	*Undecided*
4. Wood from debris flows and landslides	*Draft Rule*
8. Basal area target increase for medium and small Type Fs	*Draft Rule*
9. 60% Basal area cap	*Non-regulatory*
10. No harvest within ½ RMA	*Non-regulatory*
11. Retain largest trees within the RMA	*Non-regulatory*
12. Small Type N streams	*Undecided*

Since the BOF's decision-making and rule-making processes for these riparian rule concepts is still on-going, it is premature for EPA and NOAA to make a decision as to whether or not Oregon's approach will adequately address the riparian aspect of the condition. EPA and NOAA will not be able to make a conclusive decision until the new riparian rules have been adopted and/or voluntary, incentive-based programs have been developed that will enable water quality standards and TMDL shade targets to be achieved.

NOAA and EPA encourage the State to take progressive action on these riparian concepts. Recent analyses and studies such as the IMST review, the ODF /DEQ Shade Study funded by CWA Section 319, and TMDLs developed for several coastal watersheds demonstrate that the riparian management practices carried out under the current rules are not adequate to meet shade targets or water quality standards. Riparian rule concepts 2, 3, 8 and 10 have the greatest potential to significantly improve upon management practices designed to achieve water quality standards,

including temperature and shade targets. Therefore, we particularly encourage ODF to make progress in these areas.

In Executive Order No. EO 99-01, the Governor charged that:

> *"(3)(c) The Oregon Board of Forestry will determine, with the assistance of an advisory committee, to what extent changes to forest practices are needed to meet state water quality standards and to protect and restore salmonids. . . . The Board may determine that the most effective means of achieving any necessary changes to forest practices is through regulatory changes, statutory changes or through other programs including programs to create incentives for forest landowners."*

Therefore, as ODF and the Board of Forestry work to improve the riparian management program, they should ensure that the combination of rule changes and voluntary programs proposed will enable water quality standards to be achieved.

Although the State is making progress to address many of the IMST recommendations and concerns NOAA and EPA raised in the conditional findings, very little progress has been made in addressing cumulative effects from forestry (IMST Recommendation #2). Cumulative impacts from forestry activities, including increased road density, continue to be an important concern that should be addressed. For example, a 1995 temperature study on the Olympic Peninsula concluded that stream temperatures cannot be successfully managed at the reach level unless harvest activities are evaluated on a basin-wide scale. NOAA and EPA recognize that implementing a program that considers the cumulative effects of forestry will require a significant policy change and may take several years to complete. NOAA and EPA strongly encourage Oregon to make progress on this over the next few years. The State should demonstrate a commitment to implement Recommendation #2 or similar program over time by developing a schedule and plan to do so.

Finally, EPA and NOAA continue to support and encourage the voluntary programs under the Oregon Plan for Salmon and Watersheds that address water quality, including projects for road surveys and improvement, fish passage, large wood placement, monitoring, and education. For example, Road Erosion and Risk Projects identify roads that present risks for salmon recovery, particularly targeting "legacy" roads, and establish priorities for reducing these road-related risks. All roads on land belonging to members of Oregon's Forestry Industry Council are assessed through this program as well as some of the industrial and non-industrial forest lands. The State estimates that the forestry industry spends $13 million per year on road improvement projects in the coastal zone. In addition, the State Forests Program spent over $25 million between 1997-1999 on road restoration projects and are proposing to spend an additional $2.5 million over the next two years. These projects are valuable and worth tracking and reporting as part of program implementation.

IX. MONITORING

CONDITION: Within one year, Oregon will include in its program a plan that enables the State to assess over time the extent to which implementation of management measures is reducing pollution loads and improving water quality.

FINDING: Oregon has satisfied this condition. **(June 25, 2008)**

RATIONALE: Oregon has developed a general monitoring plan that enables the State to assess over time the extent to which the management measures are being implemented and improving water quality. The monitoring program has established a statewide rotating schedule for monitoring set reference sites and randomly selected sites for compliance with the State's water quality standards. Every year, the State samples 20% of both their reference and random sites for various parameters, including temperature, sediment, dissolved oxygen, biological criteria, pH, stream fertility, and some toxics. Depending upon the parameter sampled, Oregon has 50 or 75 established reference sites within the coastal nonpoint program management area and an additional 50 or 150 random sites across the rest of the State. In addition, the State also conducts an estuarine monitoring program that specifically samples for temperature, salinity and bacteria in shellfishing areas. The State uses this monitoring information to develop 305(b) reports and TMDL Watershed Management Plans which may require additional management measures.

Senate Bill 945 also directs the Oregon Watershed Enhancement Board (OWEB) to develop and implement a statewide Monitoring Program in coordination with state natural resource agencies for activities conducted under the Oregon Plan for Salmon and Watersheds, many of which are relevant to the 6217(g) measures. *A Monitoring Strategy for the Oregon Plan for Salmon and Watersheds* describes the framework for the OWEB monitoring strategy. The strategy includes assessing general status and trends for physical habitat and biotic conditions in selected sub-watersheds; documenting implementation of OWEB restoration projects; and evaluating the local effectiveness of restoration efforts by monitoring representative samples of specific project, activity and program types. Finally, the State will integrate information from multiple sources to produce data products and reports that assess restoration efforts and evaluate progress towards recovery goals.

In addition to these general monitoring programs, each TMDL Implementation Plan is also required to include a monitoring and assessment component to describe how the designated management agencies will routinely evaluate the effectiveness of the implementation plan and to determine if additional actions are needed to sufficiently improved impaired water bodies.

Forestry is the dominant land use within the coastal nonpoint program boundary. Therefore, to better assess the implementation and effectiveness of the Forestry Practices Act (FPA), which is consistent with the 6217(g) guidance, ODF carries out the Forest Practices Monitoring Program. The ODF's monitoring program described in the December 2002 *Forest Practices Monitoring Program Strategic Plan*, involves both BMP implementation and effectiveness monitoring. All

monitoring data is available in a central database as part of the State of Forests Integrated Information System and ODF analyzes and reports on the information collected annually. The ODF has already released several monitoring studies including the effectiveness of forest road sediment and drainage control practices, harvest effects on riparian areas, effectiveness of the FPA at obtaining temperature standards, and a comprehensive study on BMP implementation. Based on the monitoring conducted, each report recommends changes to the FPA to the Board of Forestry in order to improve the forestry program.

ODA also maintains a water quality monitoring program that monitoring agricultural land conditions, such as tracking streamside vegetation, to help them evaluate the effectiveness of landowners' and agencies' conservation efforts on agricultural lands in protecting and improving water quality. NOAA and EPA encourage Oregon to continue to implement and improve upon the various monitoring programs that comprise its Coastal Nonpoint Program monitoring network. The State should continue to dedicate sufficient staff and resources to carry out the monitoring programs. In addition, Oregon should strongly consider developing other tracking/assessment programs similar to the Forest Practices Monitoring Program for other select measures that address significant land uses within the coastal nonpoint program boundary, such as key urban or agricultural measures. The ODF should also ensure that they continue to conduct comprehensive BMP implementation studies on a regular basis and work towards implementing recommendations from past monitoring studies in a timely manner.

Compiled Document October 2012

NOAA and EPA Preliminary Decisions on Information Submitted by Oregon to Meet Coastal Nonpoint Program Conditions of Approval

I. BOUNDARY

CONDITION: Within one year, the Oregon Department of Land Conservation and Development (DLCD), Oregon Department of Environmental Quality (DEQ), U.S EPA, NOAA, and other relevant State, local, and federal agencies will participate in a cooperative process to review relevant information and determine an appropriate 6217 management area boundary consistent with established national guidance for the 6217 program.

FINDING: Oregon has satisfied this condition.

RATIONALE: Oregon's 6217 or coastal nonpoint management area for the State of Oregon is the state's existing coastal zone boundary with the addition of the inland portions of the Rogue and Umpqua Basins, in their entirety. The inland boundary of the management area intersects the Columbia River at the westward end of Puget Island, near the inland boundary of Washington's 6217 management area The inland boundary of Washington's management area intersects the Columbia River at the eastern border of WRIA 25, just east of the Wahkiakum County border.

This boundary is slightly smaller than the one NOAA originally recommended based on the state's coastal watersheds. However, NOAA and EPA's March 16, 1995, *Flexibility for State Coastal Nonpoint Programs*, guidance noted that states could use additional data and information to submit an alternative coastal nonpoint program boundary that may be less extensive than the state's coastal watershed. The Columbia River Basin is a huge, multi-state and multi-national drainage basin covering 233,000 square miles; three states and Canada contribute to the water quality of the lower Columbia River. Given its vast size, a significant amount of nonpoint source pollution within the Columbia River watershed occurs outside the "coastal watershed" boundary. In Oregon, 98% of the Columbia River watershed within the State is located above the coastal watershed. Also, 90% of the agricultural indicators of nonpoint source pollution NOAA examined in making its boundary recommendation are located above the coastal watershed. Similarly, 70% or more of the population of the Columbia River watershed resides above the coastal watershed. These factors make it extremely difficult to determine whether the relatively small portion of polluted runoff generated within the coastal watershed but outside of the Oregon's coastal nonpoint program management boundary has a significant impact on the coastal waters of the state. Therefore, based on these complicating factors and the 1995 flexibility guidance," NOAA and EPA will defer to Oregon's statement that the appropriate coastal nonpoint program boundary is westward of Puget Island.

Comment [AC1]: Update. Is this still true?

NOAA and EPA recognize that there are other tools that are currently in use or being developed to

address nonpoint source pollution outside of the coastal nonpoint program management area, such as TMDLs for 303(d) listed waters and National Pollutant Discharge and Elimination System (NPDES) Phase I and Phase II stormwater permits. However, NOAA and EPA remain concerned that sources outside the coastal nonpoint program management area could contribute to water impairment in the lower Columbia River. Therefore, we expect Oregon to use all applicable programs to control nonpoint source pollution beyond the coastal nonpoint program management area in the Lower Columbia coastal watersheds, to monitor water quality, and, if necessary, to take additional steps in the future to address those sources that have a significant impact on coastal water quality.

II. AGRICULTURAL MANAGEMENT MEASURES

A. CONFINED ANIMAL FACILITIES (Large and Small Units)

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217 (g) guidance for facilities where animals are confined for less than four months and that do not have prepared surfaces or waste water control facilities. Also within two years, Oregon will provide a strategy (in accordance with section XII, pages 19-20) for use of the State's water quality law (ORS 468B) as a back-up enforceable mechanism to ensure implementation of the management measures for confined animal facilities as proposed on pages 48-50 of the State's program submittal.

FINDING: Oregon has satisfied this condition.

RATIONALE: The Oregon Legislature adopted House Bill (HB) 2156 in 2001, amending ORS 468B to define confined animal feeding operations according to rules established by the Oregon Department of Environmental Quality (DEQ) and Oregon Department of Agriculture (ODA) and to require that the definition distinguish between various categories of operations, including those regulated by NPDES permits. The new definition removes the exclusion for combined animal feeding operations (CAFOs) where animals are confined for less than four months and that do not have prepared surfaces or waste water facilities. OAR 603-074 establishes rules for administering the CAFO program, including enforcement against water quality violations. Since 1999, ODA has conducted annual inspections of permitted CAFOs. Two new CAFO inspector positions have been created for the south and mid-coast coastal nonpoint management area. An inspector based in Tillamook will also service the northern portion of the CNPCP area. The state also has a complaint-driven enforcement process and an educational outreach program.

Comment [AC2]: Update. Make sure still accurate.

B. EROSION AND SEDIMENT CONTROL, NUTRIENT, PESTICIDE, GRAZING, AND IRRIGATION WATER MANAGEMENT

CONDITIONS: Within one year, Oregon will (1) designate agricultural water quality management areas (AWQMAs) that encompass agricultural lands within the 6217 management area, and (2) complete the wording of the alternative management measure for grazing, consistent

with the 6217(g) guidance. Agricultural water quality management area plans (AWQMAPs) will include management measures in conformity with the 6217(g) guidance, including written plans and equipment calibration as required practices for the nutrient management measure, and a process for identifying practices that will be used to achieve the pesticide management measure. The State will develop a process to incorporate the irrigation water management measure into the overall AWQMAPs. Within five years, AWQMAPs will be in place.

FINDING: Oregon has satisfied these conditions.

RATIONALE: Oregon has satisfied the conditions for Agricultural Water Quality Management Areas (AWQMAs), Agricultural Water Quality Management Area Plans (AWQMAPs or 1010 plans), and grazing. The State has established seven AWQMAs covering its coastal nonpoint program boundary and has developed AWQMAPs consistent with the 6217(g) guidance for all of these areas. All 6217(g) agriculture management measures, including nutrient management, pesticide management, irrigation, and grazing, have been included in the appendices of the coastal AWQMAPs, and in some cases, the measures have been incorporated directly into the plans. ODA and DEQ have established a joint process to review and revise the AWQMAPs every two years although NOAA and EPA note that the state has not been able to keep with this two year review cycle for all plans. NOAA and EPA encourage Oregon to ensure the plan reviews and updates occur regularly as designed and that the state uses this process to insert the 6217(g) agricultural management measures directly into the body of AWQMAPs over time and to more closely link AWQMAPs with TMDL load allocations.

Comment [AC3]: State doesn't appear to be sticking with 2-yr cycle. See pdf doc available at http://www.oregon.gov/ODA/NRD/pages/water_quality_faq.aspx#Are_all_the_area_plans_and_rules_completed_. Assuming doc is up to date, no reviews have been made since 2009. Need to confirm this.

Comment [AC4]: Have any updates occurred that included the 6217(g) MMs in the document directly? If plans have been updated, need to make sure the (g) MMs are still in the appendix.

ODA can adopt rules and prohibitions necessary to implement the AWQMAPs under ORS 568.900-568.933 and OAR 603-090-0000 through 603-090-0120. While ODA has adopted rules for all AWQMAPs within the coastal nonpoint program boundary that provide some direct enforcement authority for the plans, NOAA and EPA acknowledge that these rules are not strong enough to provide the state with direct enforcement authority for the AWQMAPs to meet 6217(g) requirements. However, the state has provided a legal opinion from its Attorney General pursuant to NOAA and EPA's 1998 *Final Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance*, demonstrating the state has adequate back-up authority to ensure implementation of the AWQMAPs. The legal opinion asserts that DEQ and the Environmental Quality Commission (EQC), in conjunction with ODA, has statutory authority to prevent nonpoint source pollution and require implementation of the 6217(g) management measures for agriculture as necessary under ORS 468B and ORS 568.900 to ORS 568.933. ODA shall consult with DEQ and the EQC in the adoption and review 1010 plans and the adoption of rules to implement the plans, providing a clear link between implementing and enforcing agencies (ORS 568.930). ODA is also committed to use enforceable mechanisms to address water quality pollution problems where voluntary compliance is not achieved (OAR 603-090-0000). In addition, a Memorandum of Agreement between DEQ and ODA memorializes coordination efforts addressing TMDLs for water quality limited water bodies and AWQMAPs.

Comment [AC5]: 2012 version of MOA does not make these specific commitments: www.**deq**.state.or.us/wq/nonpoint/docs/**ODADEQMOA**2012.pdf

Although Oregon has fully satisfied the AWQMAP condition on its coastal nonpoint program and met all 6217(g) requirements (i.e., has a process in place to implement the (g) management measures), NOAA and EPA are concerned about other aspects of the AWQMA planning process. Even though AWQMAPs are developed on a watershed scale and are not intended to only address impaired waters, NOAA and EPA are concerned that the impetus for AWQMA planning is driven more by TMDLs. Therefore, people may assume that measures need only to be implemented in specific areas where water quality is degraded which is not the case. Site-specific implementation triggered by degradation rather than proactive implementation across the landscape is not consistent with the 6217 goals of pollution prevention. NOAA and EPA also are concerned that, in actuality, the state does not take enforcement action when voluntary plan implementation is not meeting water quality goals.

Comment [AC6]: Is this still an accurate assessment of our main concerns? Language is recycled from old rationales.

Given these concerns, NOAA and EPA strongly encourage DEQ and ODA to do a thorough sufficiency analysis every two years and revise the plan and rules accordingly to include more specific standards consistent with the 6217(g) management measures for agriculture. In addition, NOAA and EPA also strongly encourage ODA to take a more active enforcement role to ensure the AWQMAPs and 6217(g) measures are being implemented as designed.

The State also has specific programs for nutrient management and irrigation that provide additional support for the AWQMAPs. Nutrient management plans, consistent with the 6217(g) guidance, are required under all new or expanded CAFO permits in compliance with ORS-468B, OAR-60374, the Federal Water Pollution Control Act (33 U.S.C., Section 1251 et seq.), and NPDES. Under the CAFO laws and rules, ODA has the authority to require nutrient management plans as part of compliance orders they issue to correct nutrient or waste load violations. The Water Resources Department's (WRD) Water Use Basin Programs codified in OAR Chapter 690 also support the irrigation measure by establishing subbasin classifications and limits on water use. NOAA and EPA encourage the ODA and DEQ to improve their coordination with WRD to ensure implementation of the 6217(g) irrigation measures. Oregon State University has also developed Western Oregon Irrigation Guides which include information on timing, measuring soil-water depletion, and application rates.

Comment [AC7]: Confirm this is still accurate.

Because the language consistent with the 6217(g) measure for grazing is included as a recommended practice in the appendix of all AWQMAPs, the state no longer needs to complete the wording of the alternative management measure for grazing.

[ADD SOMETHING ON IR-TMDL APPROACH AS APPROPRIATE]

III. URBAN

A. NEW DEVELOPMENT, SITE DEVELOPMENT, CONSTRUCTION SITE EROSION AND SEDIMENT, AND CHEMICAL CONTROL

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation throughout the 6217 management area.

FINDING:

- The state is exempt from the Construction Site Erosion and Sediment Control and Construction Site Chemical Control measures throughout the 6217 boundary. These measures are now covered under the NPDES Phase I and II Stormwater Program. **(January 13, 2004)**
- The state has satisfied the programmatic component of site development management measure **(January 13, 2004)**
- Outside of Phase I and II designated areas, Oregon has not satisfied the management measure component of the New Development management measure. **(June 25, 2008)**
- Oregon has demonstrated it has enforceable policies and mechanism in place to ensure implementation of the new and site development measures throughout the 6217 boundary. **(June 25, 2008)**

RATIONALE: Oregon meets the new development, site development, construction site erosion and sediment control and construction site chemical control measures through a mixture of regulatory and voluntary programs including its NPDES and TMDL programs, State Land Use Goals, and Water Quality Model Code and Guidebook.

Comment [AC8]: This would need to be corrected if OR is not able to satisfy the new devel condition.

First, NOAA and EPA have determined that states are exempt from the construction site erosion and sediment control and construction site chemical management measure requirements throughout the coastal nonpoint program management area. States are also exempt from the new development management measure within NPDES Phase I and II MS4 communities. These activities are covered through the NPDES stormwater permit program. (See NOAA and EPA December 20, 2002 memo, *Policy Clarification on Overlap of 6217 Coastal Nonpoint Programs with Phase I and II Stormwater Regulations*). In Oregon, the Medford Urbanized Area, and Jackson and Lane Counties are currently the only MS4s within the coastal nonpoint program management area. Grants Pass, Roseburg, and Coos Bay are to be evaluated under draft MS4 designation criteria but they have not been designated Phase II communities as of yet.

Comment [AC9]: Update: Have these and any other communities been added to the Phase II list? Are any others being considered now with the 2010 census data?

To address the new development measure outside of designated NPDES Phase I and II stormwater areas, Oregon is relying on its TMDL program. TMDLs have a wide geographic coverage in Oregon and almost all communities within the coastal nonpoint program management area must meet load allocations for either sediment or temperature. In 2013? Oregon released The *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area* … [ADD TEXT EXPLAINING HOW GUIDANCE AND TMDL PROCESS MEETS (OR STILL DOESN'T MEET?) 6217 NEW

Comment [AC10]: Still accurate?

DEVEL REQUIREMENTS.]

Even prior to the new TMDL implementation plan guidance being released, some communities were already incorporating elements consistent with the 6217(g) guidance for new development. For example, the Curry County plan reference its stormwater ordinance, which requires reducing the amount of post-development runoff consistent with the 6217(g) guidance, and provides best management practice standards to reduce total suspended solids per the 6217(g) guidance.

For areas where TMDL coverage may be lacking, Oregon's Water Quality Model Code and Guidebook enables the state to meet the new development management measure. According to a January 2001 hardcopy edition that NOAA and EPA reviewed, the guidebook also includes many practices that are consistent with the (g) guidance for new development. However, the October 2000 version that is available online is missing the critical stormwater plan section that establishes guidelines and best management practices that should be incorporated into a stormwater plan to reduce total suspended solids. While Oregon did actively promote the guidebook to local planners when it was first released in 2001, the federal partners are unclear if the state continues to work with planners to make sure they are aware of and using the guidebook as designed, especially since critical information that is needed to help satisfy the new development measure is missing from the online version. Without additional information about how the state is actively promoting and tracking its use, NOAA and EPA do not feel that the voluntary guidebook would be acceptable for meeting the new development condition by itself.

To address the site development measure, Oregon also uses the Water Quality Model Code and Guidebook along with its NPDES General Permit for Construction Activities, and State Land Use Goals to satisfy this condition. First, all activities that disturb more than an acre of land must receive a NPDES General Permit for Construction Activities. The General Permit includes, as additional control practices which must be developed if appropriate to the site, recommendations to minimize the area of disturbance and requires the permittee to describe practices that will protect existing vegetation.

State Land Use Goals 5, 6, and 7 also protect areas that provide water quality benefits, limit disturbance of natural drainage features, minimize impervious surfaces, and limit clearing and grading within identified significant natural resource areas. State law requires reach city and county to adopt a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect. The local comprehensive plans must be consistent with the statewide planning goals.

In addition to the NPDES permit and State Land Use Goals, the Water Quality Model Code and Guidebook, includes guidelines and examples that are consistent with the (g) guidance for site development such as limiting impervious surface, retaining natural vegetation, protecting areas that provide important water quality benefits, and limiting disturbance of natural drainage features. To help promote the best practices included in the Model Code and Guidebook, OSU Extension/Oregon Sea Grant has an active outreach and training program for local communities on

Comment [AC11]: Explanation should include TMDL schedule, how MMs consistent with new devel are required, training/assistance programs.

Comment [AC12]: Are there other communities we could point too?

Comment [AC13]: Only if the state can update the online version match print version and can demonstrate how it continues to promote through workshops/trainings, etc to local govn'ts?

Comment [AC14]: This still hasn't been corrected. See pg. 4.66. Online version needs to be updated ! Will help support new devel MM where TMDL Impl Plans don't apply.

Comment [AC15]: Can this be updated to show how the state continues to promote? What about OSU Extension /OR Seagrant Stormwater Solutions Workshops with EQC?

Comment [AC16]: Would this be an accurate statement?

low-impact development and has teamed up with the EQC to sponsor "stormwater solutions" workshops along the coast, Willamette, and Rouge Valleys. NOAA and EPA encourage Oregon to continue its proactive outreach about good stormwater management practices for new and site development to local communities.

NOAA and EPA understand that the state is currently updating the Model Code and Guidebook. The state anticipates distributing it to city and county planning directors via CD and the web this spring/summer. NOAA and EPA look forward to reviewing the updated document. In addition to distributing the document to local planners and announcing the new release at a statewide planning conference, we strongly encourage the state to take a more proactive approach to educating and training local planners and other decision makers about the guidebook.

Comment [AC17]: Update. I could not find a newer version (beyond Oct. 2000) online. What has the state done to continue to promote the guidebook more recently? Training for communities, etc?

Per NOAA and EPA's *1998 Final Administration Changes Memo,* Oregon has provided a legal opinion from its Attorney General to enable the state to use voluntary programs, like the Water Quality Model Code and Guidebook and stormwater and low impact development outreach programs, to help address its 6217 requirements. The legal opinion states Oregon has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the 6217(g) measures, including the new and site development management measures, as needed.

B. WATERSHED PROTECTION AND EXISTING DEVELOPMENT

CONDITION: Within three years, Oregon will further develop its program to implement the management measures for watershed protection and existing development in conformity with the 6217(g) guidance throughout the 6217 management area.

FINDING: Oregon has satisfied this condition.

RATIONALE: Oregon has satisfied its condition for existing development and watershed protection through its TMDL program, urban growth boundaries (UGBs), Land Use Goals, watershed protection and restoration activities under the Oregon Watershed Enhancement Board (OWEB) and the Oregon Plan for Salmon and Watersheds, and Executive Order No. EO99-01which reaffirms the Oregon Plan for Salmon and Watersheds.

Oregon's rigid UGBs provide watershed protection benefits by confining development to a predetermined geographic boundary. The State provides extensive assistance to communities coping with population increases within the UGB, such as the Department of Land Conservation and Development's (DLCD) Transportation Growth Management Program, which provides technical and financial assistance to local governments to incorporate "Smart Growth" principals into their planning codes. Where a UGB needs to be expanded, the state statute sets priorities for what lands adjacent to the UGB should be considered for expansion; environmental factors must be considered. The statute also allows lower priority land for urbanization can be considered for inclusion into the UGB if future urban services (i.e., roads, sanitary sewers, storm sewers, other

Comment [AC18]: Still active?

Comment [AC19]: Cite?

public utilities) could not be provided to the higher priority land due to topographical or physical constraints (i.e., steep erodible slopes, sensitive riparian habitat, wetlands or other areas essential to the natural drainage system of the area) which is consistent with the 6217(g) guidance for watershed protection).

Under the Oregon Plan, watershed councils have developed watershed assessments that help identify opportunities to preserve and restore areas that provide important water quality benefits or are necessary to maintain riparian and aquatic biota. The assessments also help identify priority projects to reduce polluted runoff from existing development. Based on these assessments, watershed councils develop watershed action plans to make funding decisions for watershed projects carried out through the Oregon Watershed Enhancement Board or the Healthy Streams Partnership. For example, between July 2001 and December 2002 OWEB distributed $45 million for projects that restore, maintain, and enhance Oregon's watersheds.

Comment [AC20]: Update? Examples of projects that support existing development?

Oregon's TMDL program is another program that identifies opportunities to reduce polluted runoff from existing development for impaired waterbodies. [ADD MORE TO EXPLAIN]

Finally, other statewide planning goals and guidelines such as Goals 5 and 6, also support the watershed protection measure by requiring local governments to inventory sensitive areas and protect natural resources. Oregon encourages local governments to adopt ordinances to support these Goals. NOAA and EPA strongly recommend the State continue to ensure local governments adopt ordinances consistent with the statewide land use goals.

Per the NOAA and EPA's *1998 Final Administration Changes Memo,* Oregon has provided a legal opinion from its Attorney General to enable the state to use voluntary programs, like OWEB, to help address its 6217(g) requirements. The legal opinion states Oregon has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of all 6217(g) management measures, including existing development and watershed protection, as needed.

C. NEW AND OPERATING ONSITE DISPOSAL SYSTEMS

CONDITION: Within two years, Oregon will finalize its proposal to inspect operating OSDS, as proposed on page 143 of its program submittal.

FINDING: Oregon has not satisfied this condition.

RATIONALE: [UPDATE THIS SECTION WITH NEW OSDS RULES].Oregon has demonstrated that it has an adequate and very strong inspection program for alternative treatment systems and has a viable inspection system for responding to complaints, although NOAA and EPA would like clarification on how the State determines what constitutes a "high priority complaint." However, Oregon still lacks an adequate inspection program to proactively inspect conventional septic systems throughout its coastal nonpoint management area.

Comment [AC21]: State has not provided update although assuming OSDS rules are adopted, state would not need this info.

NOAA and EPA note that DEQ may still pursue rule changes to require regular inspections of existing OSDS. While we encourage the state to continue to seek a rule change, we also recognize that this may take a long time and can be politically challenging to achieve.

D. ROADS, HIGHWAYS, AND BRIDGES

CONDITION: Within two years, Oregon will (1) develop management measures in conformity with the 6217 (g) guidance for construction site chemical control; (2) develop enforceable policies and mechanisms to implement the roads, highways and bridges measures on all federal and State highways throughout the 6217 management area; (3) develop management measures in conformity with the 6217 (g) guidance and enforceable policies and mechanisms for local roads, highways, and bridges throughout the 6217 management area; and (4) provide a strategy (in accordance with section XII, pages 19-20) for use of the State's water quality law (ORS 468B) as a back-up enforceable mechanism to ensure implementation of the management measures for operation and maintenance and for runoff systems, as proposed on pages 155 and 157 of the State's program submittal.

FINDING: Oregon has satisfied these conditions. **(June 25, 2008)**

RATIONALE: Oregon has satisfied its roads, highways, and bridges conditions through its NPDES and TDML programs, and OWEB grant programs. First, NOAA and EPA have determined that states are exempt from the construction site erosion and sediment control and construction site chemical management measure requirements throughout the coastal nonpoint program management area as these activities are covered through the NPDES stormwater permit program. States are also exempt from the other roads, highways, and bridges management measures within NPDES Phase I and II MS4 communities. (See NOAA and EPA December 20, 2002 memo, *Policy Clarification on Overlap of 6217 Coastal Nonpoint Programs with Phase I and II Stormwater Regulations*). In Oregon, the Medford Urbanized Area and Jackson and Lane Counties are currently the only MS4 within the coastal nonpoint program management area. Grants Pass, Roseburg, and Coos Bay are to be evaluated under draft MS4 designation criteria but they have not been designated Phase II communities as of yet.

Comment [AC22]: Update: Have these and any other communities been added to the Phase II list? Are any others being considered now with the 2010 census data?

Outside of MS4 areas, the Oregon Department of Transportation's (ODOT) Phase I Stormwater NPDES MS4 General Permit enables the state to satisfy the remaining roads, highways and bridges conditions for state and federal roadways. For local roads, Oregon relies largely on a voluntary approach backed by enforceable authorities. The state encourages local governments to follow ODOT's maintenance and construction manuals which are consistent with the 6217(g) guidance and holds training sessions that many local government road crews attend to learn about best management practices for road construction and maintenance. For example, in February 2001, ODOT sent a letter to all local governments, recommending they use the department's manuals.

Comment [AC23]: Have they done this more recently? Are there other more recent examples of how the state is encouraging local govn't to use their manual we can site to?

The DEQ's TMDL Implementation Plan guidance further promotes ODOT's manuals for use by local governments as a way of addressing water quality impairments. Completed TMDL Implementation Plans for Jackson and Curry Counties demonstrate that counties are adopting ODOT's manuals to reduce polluted runoff from road siting and maintenance activities.

Comment [AC24]: Update to reflect new guidance.

The Oregon Watershed Enhancement Board (OWEB) provides funding for a variety of watershed enhancement activities, including improvements to existing roads, highways and bridges to reduce polluted runoff. In the most recent summary report, nearly $30M of OWEB funds went to road improvements statewide during FY 2002 and 2003. The state estimates that one third of those funds were spent within the 6217 management area.

Comment [AC25]: Update.

Oregon has submitted a legal opinion from its Attorney General pursuant to the *1998 Final Administration Changes Memo* to demonstrate it has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the voluntary elements of the road, highway, and bridges management measures.

IV. MARINAS

A. MARINA FLUSHING, WATER QUALITY, and HABITAT ASSESSMENT

CONDITION: Within three years, Oregon will include in its program enforceable policies and mechanisms to implement the marina flushing and habitat assessment management measures throughout the 6217 management area.

FINDING: Oregon has satisfied this condition. **(June 25, 2008)**

RATIONALE: New or expanded marinas require a removal-fill permit from the Division of State Lands (DSL). The review process for these permits enables DSL to implement both the marina flushing and habitat assessment management measures. DSL developed a permit review checklist in 2004, to guide permit reviewers in what they should be looking for when reviewing marina permit applications. The checklist includes marina flushing and recommends 6217(g) guidance best management practices for flushing to achieve adequate water quality. To address habitat issues, DSL permit reviewers must condition the permits to "avoid or minimize impacts to fish and wildlife resources" when conducting in-water or shoreline work (141-085-0029(7)(c)).

Comment [AC26]: Confirm checklist still being used.

In addition to DSL's direct review, Oregon's Department of Fish and Wildlife (ODFW) also reviews marina applications under the removal-fill law (ORS 196.795-990) to advise DSL on its permit decisions. ODFW has three policy standards (#14304, #14309, and #14310) consistent with the 6217(g) guidance for flushing to guide their permit evaluations.

In estuarine areas, the habitat assessment measure is also supported by the State's Land Use Goal 16 (OAR 660-015-0010(1)) which provides the State with enforceable policies and mechanisms to implement the habitat assessment measure in the estuarine areas of the 6217 boundary. Goal 16

requires all local jurisdictions in the coastal zone to evaluate estuaries and identify appropriate locations for water dependent uses, including marinas. The existing natural condition and function of the estuary must be considered during the evaluation process. Specifically marinas are prohibited in areas with "natural" designations. Natural areas, at a minimum, must contain all major tracts of saltmarsh, tideflats and seagrass beds.

B. SHORELINE STABILIZATION, STORMWATER RUNOFF, FUELING STATION DESIGN, SOLID WASTE MANAGEMENT, LIQUID MATERIAL MANAGEMENT, and PETROLEUM CONTROL

CONDITION: Within three years, Oregon will develop management measures in conformity with the 6217(g) guidance and enforceable policies and mechanisms to ensure implementation of these management measures throughout the 6217 management area.

FINDING: Oregon has satisfied this condition. (**February 17, 2004)**

RATIONALE: To address many of the marina management measures, the state has developed and is implementing a voluntary clean marina certification program. The accompanying *Oregon Clean Marina Guidebook.* contains practices consistent with the 6217(g) guidance for the solid waste management, liquid material management, petroleum control, fueling station design, and storm water runoff management measures and has been distributed to all marinas within the coastal management area. The state offers other technical assistance to marinas to help them become "clean", including self-assessment checklists, site visits, and online educational materials. Over 55 marinas throughout the state have already been certified.

Comment [AC27]: The list online reflects 58 certified marinas but some are in Portland and I imagine other cities outside the CNP boundary. How many are actually w/in the CNP boundary?

Although the Guidebook does not address shoreline stabilization, Oregon has satisfied this management measure through other riparian and restoration programs such as the Oregon Watershed Enhancement Board grant (OWEB), the Oregon Aquatic Habitat Restoration and Enhancement Guide, and Oregon's Statewide Riparian Management Policy. The State also encourages use of bioengineering techniques in bank stabilization project undertaken by property owners.

Comment [AC28]: Is this still in effect?

Comment [AC29]: How so? Is there a formal program or BMP guide it uses?

Oregon has submitted a legal opinion from its Attorney General pursuant to the *1998 Final Administration Changes Memo* to demonstrate it has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the marina management measures, as needed. In addition, Oregon references OAR Chapter 340, Div 101 for Hazardous Waste and DEQ's Air Quality Regulations (OAR 340-246-0010-0230) as other enforceable policies the State can use to prevent hull scrapings and potentially other toxic materials from entering the air and water streams. Oregon's regulations for underground fuel storage tanks (OAR 340-150-0001 thorough 0620) can be used to implement the fuel station design measure when tanks are below ground.

C. SEWAGE FACILITY MANAGEMENT and MAINTENANCE

CONDITION: Within three years, Oregon will include in its program enforceable policies and mechanisms to ensure implementation of these management measures throughout the 6217 management area.

February 17, 2004 FINDING: Oregon has satisfied this condition.

RATIONALE: Oregon's marina guidebook is consistent with the (g) guidance for sewage facility management and maintenance including guidelines for determining the number of boat waste collection devices at marinas and moorages. The State also has a Vessel Waste Facility Construction Program that funds vessel waste disposal facilities. However, these programs are voluntary. Oregon cites their Water Pollution Control Regulation (specifically ORS 468B.25) as back-up authority to ensure these measures are implemented.

D. FISH WASTE and BOAT CLEANING

CONDITION: Within three years, Oregon will issue an NPDES general permit for fish waste management, which will apply to all facilities identified in the 6217(g) guidance.

FINDING: Oregon has satisfied this condition. (**February 17, 2004)**

RATIONALE: Instead of addressing the fish management measure through a NPDES permit, the State has elected to satisfy the condition through its voluntary *Oregon Clean Marina Guidebook* and clean marina certification program. The Guidebook contains practices that are consistent with the 6217(g) guidance for fish waste management. See Part IV.C above for additional information on Oregon's clean marina program and back-up authorities..

E. BOAT OPERATION

CONDITION: Within three years, Oregon will include management measures in conformity with the 6217(g) guidance.

FINDING: Oregon has satisfied this condition. (**February 17, 2004)**

RATIONALE: Oregon satisfies this condition through its voluntary clean marina certification program, Oregon Clean Marina Guidebook, and Oregon State Marine Board's regulatory authority. First, the guidebook contains practices that are consistent with the 6217(g) guidance for fish waste management. See Part IV.C above for additional information on Oregon's clean marina program and back-up authorities.

In addition to the guidebook, the Oregon State Marine Board has authority under Oregon Revised Statutes (ORS) 830.175 -.200 to regulate, through administrative rule making, recreational boating in specific waterways for a variety of purposes, including protection of water quality and fish and

wildlife resources. Boating restriction requests may be made by citizen groups, local governments, or state agencies. Several local rules limiting boating activity have resulted due to OAR 250-19.

V. HYDROMODIFICATION

CONDITION: Within two years, Oregon will develop processes to identify and implement opportunities to (1) improve the physical and chemical characteristics of surface waters and instream and riparian habitat in existing modified channels and (2) stabilize eroding streambanks or shorelines causing nonpoint problems that are not reviewed under existing authorities. Also within two years, Oregon will include in its program the dam management measures for chemical and pollutant control and protection of surface water quality and instream and riparian habitat in conformity with the (g) guidance. Within three years, Oregon will also either modify the exemptions to the removal-fill program or demonstrate that the exemptions do not preclude the State from fully implementing the management measures.

FINDING: Oregon has satisfied these conditions.

RATIONALE: Oregon, through a number of related restoration and protection initiatives, has developed a process to identify and implement opportunities to improve the physical and chemical characteristics of surface water in existing modified channels. Oregon has also developed a process to identify opportunities to restore instream and riparian habitat. Key components include: the Oregon Plan for Salmon and Watersheds, a framework for anadromous fish recovery which fosters local watershed council work to assess and restore watersheds; the Healthy Streams Partnership; the Oregon Watershed Enhancement Board, which funds riparian restoration projects, including stream habitat enhancement and restoration of previously altered stream reaches; the Oregon Aquatic Habitat Restoration and Enhancement Guide, which provides guidance on identifying and conducting restoration activities and state agency criteria and priorities for restoration; riparian management components of Agriculture Water Quality Management Area Plans; and Oregon's Statewide Riparian Management Policy.

In addition, in May of 2002, the Governor's Office published a progressive "Statewide Riparian Management Policy" that states "State agency programs that affect riparian zones should seek to manage for riparian functions as much as possible along the entire stream system, consistent with regional ecology, site capability, and social and economic needs." Among the riparian functions listed are filtration of sediments, organic material, and toxic substances in surface runoff.

Comment [AC30]: This still in effect?

Eroding stream banks in the coastal nonpoint program management area are primarily due to forestry and agricultural practices which result in the removal of vegetation from riparian areas. The opportunities for riparian corridor restoration identified via the watershed assessments, Oregon Aquatic Habitat Restoration and Enhancement Guide, and the activities of the Riparian Management Working Group, help to address the effects of vegetation removal on eroding stream banks. In addition, ODA and ODF have entered into a Memorandum of Understanding with DEQ relating to the development of TMDLs and Agriculture Water Quality Management Area Plans

(AWQMAPs), both mechanisms for addressing eroding streambanks. Finally, the State is encouraging the use of bioengineering techniques in bank stabilization projects undertaken by property owners. These projects must be reviewed and permitted by the Division of State Lands (DSL) and receive section 401 Water Quality Certification by DEQ. Both agencies have guidelines which favor the use of bioengineering techniques in stabilization projects.

Comment [AC31]: Still the case?

The Oregon Water Resources Department (OWRD) reviews all dam construction, operation, and maintenance activities. Under OAR 690, Division 310 OWRD must determine whether the proposed surface water use will impair or detrimentally affect the public interest. OWRD can condition dam construction, operation and maintenance activities through its review of permits for water appropriations to protect surface water quality, and instream and riparian habitat. OAR 690-31–0120(3)(b) defines minimum factors to be considered for new appropriations, including "water quality, with special attention to sources either listed as water quality limited or for which total maximum daily loads have been set . . . and sources which the Environmental Quality Commission has classified as outstanding resource waters." OAR 690, Division 33 establishes additional public interest standards with regard to sensitive, threatened, or endangered fish species, and requires OWRD to follow recommendations of an interagency review team comprising representatives of ODA, DEQ, ODFW, OWRD, and other state natural resource agencies, as appropriate.

When conditioning a permit, OWRD draws from a list of standard conditions. Several conditions address dam construction, operation and maintenance activities, including withdrawals, fish habitat, sediment, and downstream water quality. OWRD has demonstrated is can and does condition dam construction, operation and maintenance activities through its water appropriations permit review process to protect surface water quality, and instream and riparian habitats consistent with the 6217 (g) guidance.

NOAA and EPA have determined that states are exempt from the dam management measure for chemical and pollutant control throughout the coastal nonpoint program management area as these activities are covered through the NPDES stormwater permit program. (See NOAA and EPA December 20, 2002 memo, *Policy Clarification on Overlap of 6217 Coastal Nonpoint Programs with Phase I and II Stormwater Regulations*).

Previously, removal and fill activities involving 50 cubic yards or less of material that were not located within essential fish habitat were exempt from the removal fill laws (OAR 141.085). The rule also limited the ODFW from designating more than 20% of any stream as essential fish habitat. Division 102 of the OAR has since been amended to expand the essential fish habitat classification. Now 75-80% all waterbodies in the coastal nonpoint program management area are designated essential habitat, thus removing the 50 cubic yard exemption for removal and fill activities.

In December 2002, the DSL also amended the removal and fill administrative rules (OAR 141.085) to make Oregon's laws consistent with the federal 404 permit exemptions and more

clearly define exempt maintenance and reconstruction activities, as well as exempt farm and forest practices. The state has demonstrated that these minor exemptions will not have a significant impact on surface water quality or impact the state's ability to implement the (g) measures. The state's main strategy for implementing the maintenance aspects of the channelization/ channel modification and eroding stream banks management measures is no longer the removal-fill regulations. The state is now relying on a variety of programs such as Oregon's Watershed Enhancement Board grants program, the Oregon Aquatic Habitat and Restoration Enhancement Guide, and the Agriculture Water Quality Management Area Plans (see sections above for more details).

Oregon has submitted a legal opinion from its Attorney General pursuant to the *1998 Final Administration Changes Memo* to demonstrate it has the necessary back-up authority through its Water Quality Statutes (ORS 468B et. seq.) to require implementation of the voluntary elements of hydromodification management measures, as needed

VI. WETLANDS, RIPARIAN AREAS, AND VEGETATED TREATMENT SYSTEMS

CONDITION: Within two years, Oregon will include in its program management measures in conformity with the 6217 (g) guidance to assure the protection of riparian areas. The State will also develop a process to promote the restoration of riparian areas in conformity with the 6217 (g) guidance.

FINDING: Oregon has satisfied this condition. (**June 25, 2008)**

RATIONALE: Oregon preserves riparian areas under State Land Use Goal 5. The goal requires local governments to inventory natural resources, including riparian areas, and adopt programs that will preserve significant riparian areas. Local governments can elect to use the "safe harbor" criteria (a streamlined designation process) or the more detailed standard Goal 5 process to identify significant riparian areas. Under the "safe harbor" process, all riparian corridors adjacent to fish bearing streams and lakes are considered significant riparian resources. Local governments must pass ordinances to establish either a 75 or 50 foot riparian protection zone depending on the size of the waterbody. Development, vegetation removal and impervious surfaces are generally prohibited within these protection zones. Exemptions are only granted if equal or better protection for riparian resources is provided through riparian restoration or enhanced buffer treatment.

Under the standard Goal 5 process, local governments are required to conduct a comprehensive inventory of their riparian areas to identify significant riparian resources. The significance of each riparian area must be justifiable based on findings derived from the inventory. The DLCD reviews the inventories to determine they are adequate. The standard process acknowledges that local governments do have to manage other priority land uses that may conflict with riparian protection. Nonetheless, they are still required to establish an effective management strategy for riparian resource protection.

All cities with a population greater than 2,500 and all counties with a population greater than 15,000 must also periodically update their comprehensive plans. All counties within the 6217 management area are required to undergo these periodic reviews. During these updates, they must conduct new inventories of significant riparian resources and ensure they have programs in place to protect Goal 5 resources.

Oregon has also supported riparian protection through OWEB funded projects. According to the 2007 Report to Congress on the Pacific Coastal Salmon Recovery Funds, over $5 million in OWEB funding has helped acquire and permanently protect water quality and fisheries habitat on over 2,300 acres of critical, ecologically significant areas within Oregon's coastal basins.

Comment [AC32]: Update

Agriculture and forestry activities are exempt from Goal 5 requirements; however, riparian protection involving these activities is addressed directly through the Agriculture Water Quality Management Area (AWQMA) plans (agriculture) and the Forest Practices Act (FPA) (forestry). For example, as described earlier under the Agriculture Management Measures section, AWQMAs have developed management plans consistent with the 6217(g) guidance for the agricultural measures which includes practices to protect sensitive areas such as riparian zones. The administrative rules also note that riparian management should be conducted to allow for the establishment, growth and maintenance of riparian vegetation.

Oregon's TMDL program can also play an important role in riparian protection. All the basins within the coastal nonpoint management area have water quality impairments for temperature. To address this impairment, each designated management agency (DMA) within the listed sub-basins must develop TMDL Implementation Plans for temperature. Riparian protection and restoration are important components for reducing temperature impairments as riparian areas provide needed shading to waterways. Several TMDL Implementation Plans that have been completed are consist with the 6217(g) guidance for riparian protection.

Comment [AC33]: This still true?

Comment [AC34]: Update for new TMDL process

In the conditional findings on Oregon's Coastal Nonpoint Program, NOAA and EPA stated concern that forest land riparian areas were not being protected when the land was converted to another use under existing programs. In 2006, Oregon finalized a Memorandum of Agreement (MOA) between the Departments of Forestry, Agriculture, State Lands, Fish and Wildlife, Parks and Recreation, Land Conservation and Development, and Environmental Quality to address this issue. The MOA clearly establishes a process for notifying all signatory agencies when forest land is converted to other uses so that each agency can ensure that its responsibilities in protecting water quality and riparian areas will be carried out. The landowner/operator must submit a Plan for an Alternative Practice to ODF that addresses potential water quality or natural resource impacts of the proposed alternative practice. ODF then shares the plan with the other agencies for review. No conversion activity will be approved unless it complies with the resource protection rules of the appropriate state agency(ies) that have jurisdiction over the new activity.

[add cautionary language noting that while or has met 6217 requirements for riparian protection, we still have concerns with how programs are being implemented and that

buffers may need to be stronger in some areas?]

VII. ADMINISTRATIVE COORDINATION

CONDITION: Within one year, Oregon will establish a process for ensuring coordination among State and local agencies with a role in the implementation of the coastal nonpoint program.

FINDING: Oregon has satisfied this condition. **(April 2004)**

RATIONALE: Oregon has established a process for ensuring coordination among State and local agencies to implement the coastal nonpoint program by developing formal coordination mechanisms such as memorandum of understanding, advisory boards, agency outreach to local municipalities, and having regular informal communication among parties responsible for the program.

DEQ has signed separate Memorandums of Understanding (MOUs) with the ODA and ODF to outline agency roles in developing and revising agricultural water quality management plans and TMDLs for forestry, respectively. Several state agencies including DEQ, ODF, the ODWR, and ODFW, have also signed an MOU to provide for continued cooperation to achieve the goals of the Oregon Plan for Salmon and Watersheds, many aspects of which address 6217(g) measures.

The Community Solutions Team Advisory Board is comprised of several state agencies including the DEQ, ODF, DLCD, and ODOT. The Advisory Board coordinates local development issues including many topics relevant to the coastal nonpoint program such as TMDLs and land use laws.

Oregon's Coastal Management Program also conducts regular outreach to local governments within the coastal zone. Discussions include development and implementation of the coastal nonpoint program.

Finally, agency staff involved in the coastal nonpoint program regularly communicate with one another through informal channels. Both DEQ and DLCD have staff dedicated to the coastal nonpoint program and these individuals work with appropriate people at the other state and local agencies as needed to develop and implement the coastal nonpoint program. NOAA and EPA encourage DLCD and DEQ, as the lead state agencies for the coastal nonpoint program, to continue coordination efforts with other state and local government agencies.

VIII. CRITICAL COASTAL AREAS, ADDITIONAL MANAGEMENT MEASURES AND TECHNICAL ASSISTANCE

CONDITION: Within two years, Oregon will identify and begin applying additional management measures where water quality impairments and degradation of beneficial uses attributable to forestry exist despite implementation of the (g) measures. Within two years, Oregon will develop a process for the identification of critical coastal areas and a process for developing

and revising management measures to be applied in critical coastal areas and in areas where necessary to attain and maintain water quality standards. Also within two years, the State will develop a program to provide technical assistance in the implementation of additional management measures.

FINDING:

- Oregon has developed a process to identify critical coastal areas and a process to develop and revise management measures to be applied in critical coastal areas and in areas where necessary to attain water quality standards. (**April 2004)**
- Oregon has developed a program to provide technical assistance in the implementation of additional management measures. (**April 2004)**
- Oregon has not satisfied the condition for additional management measures for forestry. (**April 2004; June 2008)**

RATIONALE: Oregon has described a process for identifying critical coastal areas that considers the factors recommended in the NOAA/EPA *1993 Program Development and Approval Guidance.* Statewide Planning Goal 16, Estuarine Resources (OAR 660-015-0010(1)) recognizes the importance of protecting Oregon's estuaries where new or substantially expanding uses could cause or contribute to water quality impairment. Goal 16 requires classification of Oregon's estuaries into one of four types–natural, conservation, shallow draft development, or deep draft development. The estuary areas are further divided into "distinct water use management units" which define the permissible uses within each unit. In estuaries classified as natural or conservation, only activities which support these designations are allowed. Therefore, Goal 16 is an appropriate vehicle for identifying critical coastal areas in estuaries.

In addition, the OWEB watershed assessment protocol lays out a process to identify and map areas within watersheds that are in need of protection. Such a process is a good vehicle to identify critical coastal areas in the coastal watersheds. The watershed assessments are used to develop restoration and enhancement plans and prioritize projects within each watershed.

TMDLs and their associated implementation plans can also identify critical areas for special attention. Oregon requires that TMDLs developed for impaired watersheds be accompanied by water quality management plans that specify load reductions, a schedule for meeting load reductions, and management authorities responsible for achieving the load reduction. It is anticipated that all watersheds in the 6217 management area will have TMDLs completed by 2006.

Comment [AC35]: Update with current TMDL status/IR-TMDL process.

NOAA and EPA have determined that Oregon has satisfactorily developed a program to provide technical assistance. Oregon has a number of on-going grant programs, publications, and workshops that provide technical assistance to support implementation of additional management measures, many of which have been discussed in earlier sections of this document. The State has adequately described the type of technical assistance provided (grants, technical assistance documents, training workshops); the agencies providing the technical assistance (DLCD, DEQ, OWEB, ODF); the intended recipients (coastal jurisdictions, watershed councils, individual land

owners, forest operators); and a schedule of availability as required in the *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* (NOAA and EPA, January 1993).

Additional Management Measures for Forestry (June 25, 2008)

Comment [AC36]: Entire additional MM for forestry rationale will need to be updated to address IR-TMDL process, etc.

Based on Oregon's recent submittal and our understanding of Oregon's Forestry Program, EPA and NOAA still believe that Oregon lacks adequate management measures under the Oregon Forest Practices Act (FPA) rules for protecting water quality and the degradation of beneficial uses from forestry activities. EPA and NOAA's primary concerns, stated in the 1998 conditional findings and reiterated in the 2004 interim decision document, remain. Oregon still lacks adequate measures for protecting riparian areas of medium, small and non-fish bearing streams, high risk landslide areas, and for addressing the impacts of legacy roads. A broad body of science continues to demonstrate that the FPA rules do not adequately protect water quality.

NOAA and EPA support Board of Forestry (BOF) improvements to general road maintenance measures that require a better drainage network for water quality purposes (OAR 629-625-0330) and establish wet weather use requirements/restrictions (OAR 629-625-0700). These two measures, as well as the other improvements described in the submittal, should help reduce road related sedimentation. However, we remain concerned that a significant percentage of the road network on forest lands in Oregon continues to deliver sediment directly into streams, and that new drainage requirements are triggered only when road construction or reconstruction takes place. It is not clear how the rules address water quality impairment associated with legacy roads and a large portion of the existing road network where construction/reconstruction is not proposed. We recommend adoption of a road mapping and abandonment program that creates a requirement and timeline for addressing all active and legacy roads to ensure that water quality is protected. The road provisions in the Washington Forests and Fish Rules are examples that EPA and NOAA believe adequately address roads related water quality protection.

NOAA and EPA also support several recent FPA management measures adopted by the Oregon Board of Forestry (BOF) related to riparian management area requirements. Additional FPA management measures have been adopted to require increased riparian protection upstream from man-made fish barriers (OAR 629-635-0200(13)) and for substituting upland leave trees in riparian management areas along landslide prone non-fish streams (OAR 629-640-0210) likely to deliver wood to fish bearing streams. While these additional measures are an improvement over existing rules, they are not adequate to meet water quality standards or to ensure that beneficial uses such as domestic water supply and salmonid spawning and rearing will be protected. There is a substantial body of assessment and research that have identified the need for increased riparian protection beyond levels provided by the Oregon FPA.

Finally, NOAA and EPA note that there have been amendments to the Oregon Administrative Rules (OAR 629-623-0000 to 08000) to require identification of landslide hazard areas in stewardship plans, and during road construction and maintenance. Timber harvest and road construction are not allowed on sites with "substantial downslope public safety risk." While this

rule change is a step in the right direction and helps to protect a subset of high risk landslide areas, hazards are defined only as they relate to risk for loss of life and property. The majority of small streams and landslide prone areas on private forest lands in Oregon still do not receive adequate protection under the FPA rules. In order to protect water quality, NOAA and EPA strongly encourage Oregon to expand timber harvest and road construction management measures to apply to the high risk landslide areas that can deliver sediment to streams, lakes, and wetlands, not just to areas where property or human life are threatened.

The Oregon Forest Practice Rules and Statutes include best management practices to maintain water quality (ORS 527.765). Part (2) of this section requires the Board of Forestry (BOF) to consult with the Environmental Quality Commission, which is responsible for establishing the policies for the operation of the Department of Environmental Quality, including its water quality programs, as they adopt and review BMPs to address nonpoint source discharges from forest operations. The EQC can petition the Board of Forestry to initiate a "Basin Rule" change review to address inadequacies in the FPA management measures that are contributing to violations of water quality standards (ORS 527.765(3)(d)). The BOF cannot terminate the Basin Rule change review without the concurrence of the EQC. The Basin Rule change provisions that have been in place since 1994 have not been utilized by the EQC. We encourage the EQC to begin utilizing the Basin Rule change provisions where inadequacies in the Oregon FPA contribute to water quality impairment.

EPA and NOAA recognize the extensive voluntary protection and restoration efforts on forestry lands to improve water quality and protect riparian areas. NOAA and EPA continue to strongly support these voluntary efforts. However, the lack of adequate forestry management measures for riparian and landslide prone areas affects a substantial portion of the coastal zone, where 50% to 80% of the stream network in steep, forested watersheds consists of small streams that receive very limited protection. In addition to having direct adverse impacts to water quality, existing forestry practices have indirect adverse effects on the voluntary conservation and restoration efforts of local watershed groups. For example, the benefits of voluntary efforts to remove barriers to fish to allow access to upstream spawning and rearing habitats are offset when forestry practices along upstream reaches degrade riparian habitats and water quality.

While we acknowledge Oregon's extensive voluntary efforts, and its incremental progress on the regulatory front, NOAA and EPA do not believe the progress made is adequate to address the additional management measures for forestry condition on Oregon's Coastal Nonpoint Program. Both Federal agencies continue to believe that additional revisions to Oregon's FPA rules are needed to fully protect water quality and beneficial uses. NOAA and EPA urge the State to move forward expeditiously to adopt and implement additional management measures, either through application of basin specific rules or statewide changes to the FPA and OARs. By adequately addressing our riparian, road and land slide concerns throughout coastal watersheds, Oregon will have sufficient measures in place to address cumulative impacts from forestry as well. If Oregon still wishes to pursue a voluntary approach, backed by enforceable authorities, to address this condition, it must provide more specific information related to funding and project

accomplishments on forestry lands within the 6217 management boundary and associated enforceable authorities.

April 2004 Add MM for Forestry Rationale

NOAA and EPA agree that Oregon has processes in place to identify additional management measures for forestry through review procedures such as that of the Independent Multidisciplinary Science Team and the sufficiency analyses called for in the MOU between ODF and DEQ. However, Oregon has not yet begun to sufficiently apply additional management measures that address our water quality concerns.

In the 1998 rationale for findings and conditions, EPA and NOAA identified areas under the Forest Practices Act and Administrative Rules that should be strengthened to attain water quality standards and fully support beneficial uses: "These areas include protection of medium, small, and non-fish bearing streams, including intermittent streams; protection of areas at high risk for landslides; the ability of forest practices to address cumulative impacts of forestry activities; road density and maintenance, particularly on so-called 'legacy' roads; and the adequacy of stream buffers for application of certain chemicals."

The latter concern about the adequacy of stream buffers for application of certain chemicals is being addressed by processes that may result in additional buffer protection requirements beyond those on existing labels in order to protect endangered species.

Comment [AC37]: Will need to update this to reflect recent toxics activities at EPA and OR's more recent pesticide mgmt plans, etc? If EPA doesn't act, does OR have enough on the own to satisfy?

NOAA and EPA are pleased to note that more protective forestry rules to address landslides and road construction have been formulated and passed. Amendments to the Oregon Administrative Rules (OAR 629-623-0000 to 08000) require identification of landslide hazard areas in stewardship plans, and road construction and maintenance. Timber harvest and road construction are not allowed on sites with "substantial downslope public safety risk" and harvesting activities that occur on other high landslide hazard areas must use specific practices to prevent ground disturbance. However, hazards are defined only as they relate to risk for losses of life and property, not water quality. NOAA and EPA would like Oregon to explain how these new amendments protect surface water quality, if at all. There have also been other improvements in general road maintenance to provide a better drainage network for water quality purposes (OAR 629-625-0330) and to establish wet weather use requirements/restrictions (OAR 629-625-0700).

In March of 2003, Oregon submitted an update and additional information showing how the Oregon Department of Forestry (ODF) uses recommendations from the Forest Practices Advisory Committee (FPAC), the Independent Multidisciplinary Science Team (IMST), the ODF/DEQ Sufficiency Analysis, and the Eastside Riparian Functions Advisory Committee (ERFAC) to develop rule concepts for riparian areas. The submission included a Forest Practices Process Chart, some detail on recommendations, a sample of minutes from a Board of Forestry meeting, and an anticipated schedule for reviewing riparian concepts and rule making. At that time, it was anticipated that draft rules would be presented to the Board in June 2003 and that rules would be adopted in October 2003.

NOAA and EPA understand that this process is continuing but has fallen behind schedule. At this point, ODF and the Board of Forestry are considering eighteen draft rule concepts for water protection and riparian functions. They are deciding whether the action for each concept will be to draft a rule or to pursue a non-regulatory pathway. Once those decisions are made, the resultant package of draft rules will undergo an analysis of economic impact and examination of alternatives before being put out for public review. At present, three of the eighteen concepts are moving forward into the draft rule package and four of the eighteen concepts are being directed into non-regulatory pathways, leaving eleven still to be decided upon.

The rule concepts that relate most directly to the expressed concerns of the Coastal Nonpoint Program are the following:

Rule Concept	***Proposed Action***
2. Use Type F prescriptions for large and medium Type N streams	*Undecided*
3. Riparian management areas (RMA) above fish barriers	*Undecided*
4. Wood from debris flows and landslides	*Draft Rule*
8. Basal area target increase for medium and small Type Fs	*Draft Rule*
9. 60% Basal area cap	*Non-regulatory*
10. No harvest within ½ RMA	*Non-regulatory*
11. Retain largest trees within the RMA	*Non-regulatory*
12. Small Type N streams	*Undecided*

Since the BOF's decision-making and rule-making processes for these riparian rule concepts is still on-going, it is premature for EPA and NOAA to make a decision as to whether or not Oregon's approach will adequately address the riparian aspect of the condition. EPA and NOAA will not be able to make a conclusive decision until the new riparian rules have been adopted and/or voluntary, incentive-based programs have been developed that will enable water quality standards and TMDL shade targets to be achieved.

NOAA and EPA encourage the State to take progressive action on these riparian concepts. Recent analyses and studies such as the IMST review, the ODF /DEQ Shade Study funded by CWA Section 319, and TMDLs developed for several coastal watersheds demonstrate that the riparian management practices carried out under the current rules are not adequate to meet shade targets or water quality standards. Riparian rule concepts 2, 3, 8 and 10 have the greatest potential to significantly improve upon management practices designed to achieve water quality standards,

Comment [AC38]: Update. Its not that recent anymore. Have more recent studies lead to similar conclusions?

including temperature and shade targets. Therefore, we particularly encourage ODF to make progress in these areas.

In Executive Order No. EO 99-01, the Governor charged that:

> *"(3)(c) The Oregon Board of Forestry will determine, with the assistance of an advisory committee, to what extent changes to forest practices are needed to meet state water quality standards and to protect and restore salmonids. . . . The Board may determine that the most effective means of achieving any necessary changes to forest practices is through regulatory changes, statutory changes or through other programs including programs to create incentives for forest landowners."*

Therefore, as ODF and the Board of Forestry work to improve the riparian management program, they should ensure that the combination of rule changes and voluntary programs proposed will enable water quality standards to be achieved.

Although the State is making progress to address many of the IMST recommendations and concerns NOAA and EPA raised in the conditional findings, very little progress has been made in addressing cumulative effects from forestry (IMST Recommendation #2). Cumulative impacts from forestry activities, including increased road density, continue to be an important concern that should be addressed. For example, a 1995 temperature study on the Olympic Peninsula concluded that stream temperatures cannot be successfully managed at the reach level unless harvest activities are evaluated on a basin-wide scale. NOAA and EPA recognize that implementing a program that considers the cumulative effects of forestry will require a significant policy change and may take several years to complete. NOAA and EPA strongly encourage Oregon to make progress on this over the next few years. The State should demonstrate a commitment to implement Recommendation #2 or similar program over time by developing a schedule and plan to do so.

Finally, EPA and NOAA continue to support and encourage the voluntary programs under the Oregon Plan for Salmon and Watersheds that address water quality, including projects for road surveys and improvement, fish passage, large wood placement, monitoring, and education. For example, Road Erosion and Risk Projects identify roads that present risks for salmon recovery, particularly targeting "legacy" roads, and establish priorities for reducing these road-related risks. All roads on land belonging to members of Oregon's Forestry Industry Council are assessed through this program as well as some of the industrial and non-industrial forest lands. The State estimates that the forestry industry spends $13 million per year on road improvement projects in the coastal zone. In addition, the State Forests Program spent over $25 million between 1997-1999 on road restoration projects and are proposing to spend an additional $2.5 million over the next two years. These projects are valuable and worth tracking and reporting as part of program implementation.

Comment [AC39]: Update

IX. MONITORING

CONDITION: Within one year, Oregon will include in its program a plan that enables the State to assess over time the extent to which implementation of management measures is reducing pollution loads and improving water quality.

FINDING: Oregon has satisfied this condition. (**June 25, 2008)**

RATIONALE: Oregon has developed a general monitoring plan that enables the State to assess over time the extent to which the management measures are being implemented and improving water quality. The monitoring program has established a statewide rotating schedule for monitoring set reference sites and randomly selected sites for compliance with the State's water quality standards. Every year, the State samples 20% of both their reference and random sites for various parameters, including temperature, sediment, dissolved oxygen, biological criteria, pH, stream fertility, and some toxics. Depending upon the parameter sampled, Oregon has 50 or 75 established reference sites within the coastal nonpoint program management area and an additional 50 or 150 random sites across the rest of the State. In addition, the State also conducts an estuarine monitoring program that specifically samples for temperature, salinity and bacteria in shellfishing areas. The State uses this monitoring information to develop 305(b) reports and TMDL Watershed Management Plans which may require additional management measures.

Comment [AC40]: This still accurate?

Comment [AC41]: Still accurate?

Comment [AC42]: Still accurate?

Senate Bill 945 also directs the Oregon Watershed Enhancement Board (OWEB) to develop and implement a statewide Monitoring Program in coordination with state natural resource agencies for activities conducted under the Oregon Plan for Salmon and Watersheds, many of which are relevant to the 6217(g) measures. *A Monitoring Strategy for the Oregon Plan for Salmon and Watersheds* describes the framework for the OWEB monitoring strategy. The strategy includes assessing general status and trends for physical habitat and biotic conditions in selected sub-watersheds; documenting implementation of OWEB restoration projects; and evaluating the local effectiveness of restoration efforts by monitoring representative samples of specific project, activity and program types. Finally, the State will integrate information from multiple sources to produce data products and reports that assess restoration efforts and evaluate progress towards recovery goals.

Comment [AC43]: Is this still the most current version or has it been updated?

In addition to these general monitoring programs, each TMDL Implementation Plan is also required to include a monitoring and assessment component to describe how the designated management agencies will routinely evaluate the effectiveness of the implementation plan and to determine if additional actions are needed to sufficiently improved impaired water bodies.

Forestry is the dominant land use within the coastal nonpoint program boundary. Therefore, to better assess the implementation and effectiveness of the Forestry Practices Act (FPA), which is consistent with the 6217(g) guidance, ODF carries out the Forest Practices Monitoring Program. The ODF's monitoring program described in the December 2002 *Forest Practices Monitoring Program Strategic Plan*, involves both BMP implementation and effectiveness monitoring. All

Comment [AC44]: Has this been updated?

monitoring data is available in a central database as part of the State of Forests Integrated Information System and ODF analyzes and reports on the information collected annually. The ODF has already released several monitoring studies including the effectiveness of forest road sediment and drainage control practices, harvest effects on riparian areas, effectiveness of the FPA at obtaining temperature standards, and a comprehensive study on BMP implementation. Based on the monitoring conducted, each report recommends changes to the FPA to the Board of Forestry in order to improve the forestry program.

Comment [AC45]: Still accurate?

Comment [AC46]: Any more reports been released?

ODA also maintains a water quality monitoring program that monitoring agricultural land conditions, such as tracking streamside vegetation, to help them evaluate the effectiveness of landowners' and agencies' conservation efforts on agricultural lands in protecting and improving water quality. NOAA and EPA encourage Oregon to continue to implement and improve upon the various monitoring programs that comprise its Coastal Nonpoint Program monitoring network. The State should continue to dedicate sufficient staff and resources to carry out the monitoring programs. In addition, Oregon should strongly consider developing other tracking/assessment programs similar to the Forest Practices Monitoring Program for other select measures that address significant land uses within the coastal nonpoint program boundary, such as key urban or agricultural measures. The ODF should also ensure that they continue to conduct comprehensive BMP implementation studies on a regular basis and work towards implementing recommendations from past monitoring studies in a timely manner.

Comment [AC47]: Have any additional tracking programs been developed?

Comment [AC48]: Is this being done?

Document Comments
Total Comments: 48

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update. Is this still true?
Scope: 70%

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update. Make sure still accurate.
Scope: Since 1999, ODA has conducted annual inspections of permitted CAFOs. Two new CAFO inspector positions have been created for the south and mid-coast coastal nonpoint management area. An inspector based in Tillamook will also service the northern portion of the CNPCP area. The state also has a complaint-driven enforcement process and an educational outreach program.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: State doesn't appear to be sticking with 2-yr cycle. See pdf doc available at http://www.oregon.gov/ODA/NRD/pages/water_quality_faq.aspx#Are_all_the_area_plans_and_rules_completed_. Assuming doc is up to date, no reviews have been made since 2009. Need to confirm this.
Scope: every two years

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Have any updates occurred that included the 6217(g) MMs in the document directly? If plans have been updated, need to make sure the (g) MMs are still in the appendix.
Scope: NOAA and EPA encourage Oregon to ensure the plan reviews and updates occur regularly as designed and that the state uses this process to insert the 6217(g) agricultural management measures directly into the body of AWQMAPs over time and to more closely link AWQMAPs with TMDL load allocations

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: 2012 version of MOA does not make these specific commitments: www.deq.state.or.us/wq/nonpoint/docs/ODADEQMOA2012.pdf
Scope: .

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC

Range: Is this still an accurate assessment of our main concerns? Language is recycled from old rationales.
Scope: NOAA and EPA are concerned that the impetus for AWQMA planning is driven more by TMDLs. Therefore, people may assume that measures need only to be implemented in specific areas where water quality is degraded which is not the case. Site-specific implementation triggered by degradation rather than proactive implementation across the landscape is not consistent with the 6217 goals of pollution prevention. NOAA and EPA also are concerned that, in actuality, the state does not take enforcement action when voluntary plan implementation is not meeting water quality goals.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Confirm this is still accurate.
Scope: has the authority to require nutrient management plans as part of compliance orders they issue to correct nutrient or waste load violations

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: This would need to be corrected if OR is not able to satisfy the new devel condition.
Scope: meets the new development

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update: Have these and any other communities been added to the Phase II list? Are any others being considered now with the 2010 census data?
Scope: Grants Pass, Roseburg, and Coos Bay are to be evaluated under draft MS4 designation criteria but they have not been designated Phase II communities as of yet.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Still accurate?
Scope: sediment or temperature

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Explanation should include TMDL schedule, how MMs consistent with new devel are required, training/assistance programs.
Scope: REQUIREMENTS.]

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Are there other communities we could point too?
Scope: the Curry County plan

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Only if the state can update the online version match print version and can demonstrate how it continues to promote through workshops/trainings, etc to local govn'ts?
Scope: enables the state to meet

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: This still hasn't been corrected. See pg. 4.66. Online version needs to be updated ! Will help support new devel MM where TMDL Impl Plans don't apply.
Scope: However, the October 2000 version that is available online is missing the critical stormwater plan section that establishes guidelines and best management practices that should be incorporated into a stormwater plan to reduce total suspended solids

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Can this be updated to show how the state continues to promote? What about OSU Extension /OR Seagrant Stormwater Solutions Workshops with EQC?
Scope: While Oregon did actively promote the guidebook to local planners when it was first released in 2001, the federal partners are unclear if the state continues to work with planners to make sure they are aware of and using the guidebook as designed, especially since critical information that is needed to help satisfy the new development measure is missing from the online version. Without additional information about how the state is actively promoting and tracking its use, NOAA and EPA do not feel that the voluntary guidebook would be acceptable for meeting the new development condition by itself.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Would this be an accurate statement?
Scope: promote the best practices included in the Model Code

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update. I could not find a newer version (beyond Oct. 2000) online. What has the state done to continue to promote the guidebook more recently? Training for communities, etc?
Scope: NOAA and EPA understand that the state is currently updating the Model Code and Guidebook. The state anticipates distributing it to city and county planning directors via CD and the web this spring/summer. NOAA and EPA look forward to reviewing the updated document. In addition to distributing the document to local planners and announcing the new release at a statewide planning conference, we strongly encourage the

state to take a more proactive approach to educating and training local planners and other decision makers about the guidebook.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Still active?
Scope: Transportation Growth Management Program

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Cite?
Scope: state statute

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update? Examples of projects that support existing development?
Scope: For example, between July 2001 and December 2002 OWEB distributed $45 million for projects that restore, maintain, and enhance Oregon's watersheds

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: State has not provided update although assuming OSDS rules are adopted, state would not need this info.
Scope: although NOAA and EPA would like clarification on how the State determines what constitutes a "high priority complaint."

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update: Have these and any other communities been added to the Phase II list? Are any others being considered now with the 2010 census data?
Scope: Grants Pass, Roseburg, and Coos Bay are to be evaluated under draft MS4 designation criteria but they have not been designated Phase II communities as of yet.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Have they done this more recently? Are there other more recent examples of how the state is encouraging local govn't to use their manual we can site to?
Scope: February 2001,

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update to reflect new guidance.
Scope: DEQ's TMDL Implementation Plan guidance

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update.
Scope: In the most recent summary report, nearly $30M of OWEB funds went to road improvements statewide during FY 2002 and 2003. The state estimates that one third of those funds were spent within the 6217 management area.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Confirm checklist still being used.
Scope: checklist in 2004

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: The list online reflects 58 certified marinas but some are in Portland and I imagine other cities outside the CNP boundary. How many are actually w/in the CNP boundary?
Scope: 55 marinas

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Is this still in effect?
Scope: Oregon’s Statewide Riparian Management Policy

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: How so? Is there a formal program or BMP guide it uses?
Scope: The State also encourages use of bioengineering techniques in bank stabilization project undertaken by property owners.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: This still in effect?
Scope: progressive “Statewide Riparian Management Policy

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Still the case?
Scope: Finally, the State is encouraging the use of bioengineering techniques in bank stabilization projects undertaken by property owners. These projects must be reviewed and permitted by the Division of State Lands (DSL) and receive section 401 Water Quality Certification by DEQ. Both agencies have guidelines which favor the use of bioengineering techniques in stabilization projects.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update
Scope: . According to the 2007 Report to Congress on the Pacific Coastal Salmon Recovery Funds, over $5 million in OWEB funding has helped acquire and permanently protect water quality and fisheries habitat on over 2,300 acres of critical, ecologically significant areas within Oregon's coastal basins.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: This still true?
Scope: water quality impairments for temperature

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update for new TMDL process.
Scope: Oregon's TMDL program can also play an important role in riparian protection. All the basins within the coastal nonpoint management area have water quality impairments for temperature. To address this impairment, each designated management agency (DMA) within the listed sub-basins must develop TMDL Implementation Plans for temperature. Riparian protection and restoration are important components for reducing temperature impairments as riparian areas provide needed shading to waterways. Several TMDL Implementation Plans that have been completed are consist with the 6217(g) guidance for riparian protection.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update with current TMDL status/IR-TMDL process.
Scope: . It is anticipated that all watersheds in the 6217 management area will have TMDLs completed by 2006.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Entire additional MM for forestry rationale will need to be updated to address IR-TMDL process, etc.
Scope: Additional Management Measures for Forestry (June 25, 2008)

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Will need to update this to reflect recent toxics activities at EPA and OR's more recent pesticide mgnt plan, etc? If EPA doesn't act, does OR have enough on its own to satisfy?
Scope: The latter concern about the adequacy of stream buffers for application of certain chemicals is being addressed by processes that may result in additional buffer protection requirements beyond those on existing labels in order to protect endangered species.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update. Its not that recent anymore. Have more recent studies lead to similar conclusions?
Scope: Recent analyses

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Update
Scope: The State estimates that the forestry industry spends $13 million per year on road improvement projects in the coastal zone. In addition, the State Forests Program spent over $25 million between 1997-1999 on road restoration projects and are proposing to spend an additional $2.5 million over the next two years.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: This still accurate?
Scope: Every year, the State samples 20% of both their reference and random sites for various parameters, including temperature, sediment, dissolved oxygen, biological criteria, pH, stream fertility, and some toxics.

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Still accurate?
Scope: has 50 or 75 established reference sites

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Still accurate?
Scope: 50 or 150 random sites

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Is this still the most current version or has it been updated?
Scope: A Monitoring Strategy for the Oregon Plan for Salmon and Watersheds

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Has this been updated?
Scope: December 2002 Forest Practices Monitoring Program Strategic Plan

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM

Initial: AC
Range: Still accurate?
Scope: ODF analyzes and reports on the information collected annually

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Any more reports been released?
Scope: The ODF has already released several monitoring studies including the effectiveness of forest road sediment and drainage control practices, harvest effects on riparian areas, effectiveness of the FPA at obtaining temperature standards, and a comprehensive study on BMP implementation

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Have any additional tracking programs been developed?
Scope: developing other tracking/assessment programs s

Author: Allison Castellan
Date: 10/12/2012 4:05:00 PM
Initial: AC
Range: Is this being done?
Scope: comprehensive BMP implementation studies on a regular basis